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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1962~~ 1963

No. ~~606~~ 39

NEW YORK TIMES COMPANY, PETITIONER,

vs.

L. B. SULLIVAN.

No. ~~609~~ 40

RALPH D. ABERNATHY, ET AL., PETITIONERS,

vs.

L. B. SULLIVAN.

ON WRITS OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF ALABAMA

PETITIONS FOR CERTIORARI FILED NOVEMBER 21, 1962
CERTIORARI GRANTED JANUARY 7, 1963

SUPREME COURT OF THE UNITED STATES

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[fol. 2081]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Court Met Pursuant to Adjournment

Present The Honorable Walter B. Jones, Judge Presiding

[Title omitted]

ORDER CONTINUING MOTION FOR NEW TRIAL—
December 16, 1960

This day came the parties by attorneys and the motion of the defendant J. E. Lowery, to set aside the verdict of the jury and the judgment of the Court entered thereon and to grant him a new trial herein, be and the same is hereby continued until January 14, 1961 at 10:00 A. M.

[fol. 2082]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF DEFENDANT, S. S. SEAY, SR. FOR NEW TRIAL—
Filed December 2, 1960

Comes now the Defendant, S. S. Seay, Sr., in the above styled cause and moves the Court to set aside the verdict of the jury heretofore returned and the judgment rendered thereon in this Court on, to-wit: November 3, 1960, and to grant a new trial of the issues herein and, as grounds therefor, sets forth and assigns, separately and severally, the following:

1. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the Defendant in the cause:

"Charge No. 1. I charge you gentlemen of the jury, to find a verdict in favor of the Defendant, S. S. Seay, Sr.

2. For that during the trial an error of law occurred which was excepted to by the Defendant, in that the Court refused to give the following written charge requested by the Defendant in the cause:

"Charge No. 2. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr. did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him.

3. For that during the trial an error of law occurred which was excepted to by the Defendant, in that the Court refused to give the following written charge requested by the Defendant in the cause:

"Charge No. 3. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr. did not consent to the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

4. For that during the trial an error of law occurred which was excepted to by the Defendant, in that the Court refused to give the following written charge requested by the Defendant in the cause:

"Charge No. 4. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

5. For that during the trial an error of law occurred which was excepted to by the Defendant, in that the Court refused to give the following written charge requested by the Defendant in this cause.

"Charge No. 5. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict for him."

[fol. 2083] No. 6. For that during the trial an error of law occurred which was excepted to by the Defendant, in that the Court refused to give the following written charge requested by the Defendant in the cause:

"Charge No. 6. I charge you, gentlemen of the jury, that if from the evidence you find that the Defendant, S. S. Seay,

Sr., did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

7. For that during the trial an error of law occurred which was excepted to by the Defendant, in that the Court refused to give the following written charge requested by the Defendant in the cause:

Charge No. 8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the Defendant, S. S. Seay, Sr., was the author or the publisher of the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said Defendant."

8. For that during the trial an error of law occurred which was excepted to by the Defendant, in that the Court refused to give the following written charge requested by the Defendant in the cause:

"Charge No. 9. I charge you, gentlemen of the jury, to constitute a libel, there must be a publication as well as a writing, and if the publication was made without the consent of the Defendant, S. S. Seay, Sr., the offense is not complete as to him and you must return a verdict in favor of him."

9. For that during the trial an error of law occurred which was excepted to by the Defendant, in that the Court refused to give the following written charge requested by the Defendant in the cause:

Charge No. 11. I charge you, gentlemen of the jury, that if you find from the evidence that the Defendant, S. S. Seay, Sr., had no knowledge of the writing or publication of the advertisement, prior to publication, that appeared in the New York Times, dated, Tuesday, March 29, 1960, you must return a verdict for the said Defendant."

10. For that during the trial an error of law occurred which was excepted to by the Defendant, in that the Court

refused to give the following written charge requested by the Defendant in the cause:

"Charge No. 12. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, S. S. Seay, Sr. directly or indirectly, or through some other person authorized to act for him, published or consented to the publication of the statements complained of [fol. 2084] which appeared in the New York Times on March 29, 1960, and unless from the evidence you are convinced that said Defendant did directly or indirectly or through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the Defendant, S. S. Seay, Sr.

11. For that during the trial an error of law occurred which was excepted to by the Defendant, in that the Court refused to give the following written charge requested by the Defendant in the cause:

"Charge No. 13. I charge you, gentlemen of the jury that if you believe from the evidence that the Defendant, S. S. Seay, Sr., did Not authorize the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant."

12. For that during the trial an error of law occurred which was excepted to by the Defendant, in that the Court refused to give the following written charge requested by the Defendant in this cause:

"Charge No. 14. Gentlemen of the jury, if you believe from the evidence that the Defendant, S. S. Seay, Sr., did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant."

13. For that during the trial an error of law occurred which was excepted to by the Defendant, in that the Court refused to give the following written charge requested by the Defendant in the cause:

"Charge No. 16. I charge you, gentlemen of the jury, if from the evidence you believe that the defendant, S. S. Seay, Sr., did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29, 1960, then, as a matter of law, there was no legal obligation on the part of this defendant to reply to the letter written by the Plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant."

14. For that during the trial an error of law occurred which was excepted to by the Defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never authorized any one to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the plaintiff wrote a letter to the defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, [fol. 2085] and if you further believe from the evidence that the defendant did not reply to the Plaintiff's letter, I charge you as a matter of law that the Defendant's failure to reply to plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the Defendant to reply to Plaintiff's letter, and you must return a verdict for the defendant, S. S. Seay, Sr."

15. For that during the trial an error of law occurred which was excepted to by the Defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant, S. S. Seay, Sr."

16. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court

refused to give the following written charge requested by the defendant in the cause:

"Charge No. 19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant, S. S. Seay, Sr. consented to the use of his name in connection with the publication of the advertisement complained of, you must find for said defendant."

17. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 20. I charge you gentlemen of the jury, that unless on the evidence you are convinced that the defendant, had knowledge of the writing or publication of the advertisement complained of, prior to publication in the New York Times, dated Tuesday, March 29, 1960, you must find for the defendant."

18. For that during the trial an error of law occurred which was excepted to by the Defendant, in that the Court gave the following oral charge to the jury: "Now, the Court is of the opinion and so charges you gentlemen of the jury, that the matter complained of in plaintiff's Exhibit No. 347, that's the controversial ad which you will have before you, and parts of which are set out in the Counts here in the Complaint, belongs to that class of defamation called in law, libel per se."

19. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court gave the following oral charge to the jury: "We can say, as part of the law in this case, that a publication is libelous per se when they are such as to degrade the plaintiff in the estimation of his friends and the people of the place where he lives, as injure him in his public office, or impute mis-[fol. 2086] conduct to him in his office, or want of official integrity, or want of fidelity to a public trust or such as will subject the plaintiff to ridicule or public distrust. All those kind of charges are called, libelous per se."

20. For that during the trial an error of law occurred which was excepted to by the Defendant, in that the Court

gave the following oral charge to the jury: "Now, it is the contention of the plaintiff here that although you may believe, as to the four individual defendants, that they did not sign this advertisement and did not authorize it, yet it is the contention of the plaintiff, Sullivan, that the four individuals, the four individual defendants after knowing of the publication of the advertisement and after knowing of its content, ratified the use of their names, that is, they approved and sanctioned this advertisement. In other words, the plaintiff, Sullivan, insists that there was a ratification of the advertisement and the use of their names as signers of the advertisement by the four individual defendants and we here define ratification as the approval by a person of a prior act which did not bind him but which was professedly done on his account or in his behalf whereby the act, the use of his name, the publication, is given effect as if authorized by him in the very beginning. Ratification is really the same as a previous authorization and is a confirmation or approval of what has been done by another on his account. Now, it is for you twelve jurors to say from all the evidence whether the four defendants ratified the advertisement now before you, that is, ratified that advertisement as I have defined the word ratification to you."

21. For that during the trial an error of law occurred which was excepted to by the Defendant, in that the Court gave the following oral charge to the jury: "We here define ratification as the approval by a person of a prior act which did not bind him but which was professedly done on his account or in his behalf whereby the act, the use of his name, the publication, is given effect as if authorized by him in the very beginning."

22. The Court erred in overruling defendant's demurrers to the complaint and to each count thereof.

23. The Court erred in overruling defendant's amended demurrers to the complaint and to each count thereof.

24. The Court erred in denying and overruling the defendant's motion to exclude plaintiff's evidence, said motion having been made at the conclusion of the plaintiff's case.

25. The Court erred in denying and overruling the defendant's motion to exclude the plaintiff's evidence, said motion having been made at the conclusion of the introducing of all of the evidence in the case.

26. There existed an irregularity in the proceedings of [fol. 2087] the Court by which the party defendant was prevented from having a fair trial in that the Court is a member of the Board of Jury Supervisor of Montgomery, Alabama; and that said Board selected jurors pursuant to Act No. 118 of March 8, 1939, and said Act being unconstitutional, said selection of jurors thereunder by the Court being in violation of Article I, Section II of Alabama Code of 1901 and the Code of Alabama (1940) Title 7, Section 260, in that the Court as a member of the Board by so selecting those persons who are to decide the case decided both the facts and the law.

27. There existed an irregularity in the proceedings of the Court by which the party defendant was prevented from having a fair trial in that defendant was subjected to the exercise of judicial power before a tribunal which required its very facilities to be segregated on the basis of race and color and that the imposition of judicial power upon defendant in a segregated tribunal denied to defendant his right to due process and equal protection of the law as guaranteed him under the Alabama and Federal Constitutions.

28. There existed an irregularity in the proceedings of the Court which prevented the party defendant from having a fair trial in that Alabama's Constitutional Amendment of 1850 required the popular election of judges, said amendment being codified in Section 152 of the Alabama Constitution of 1901, and that under Section 152 a judge's lawful election to the court by all qualified electors is constitutionally pre-requisite to the lawful exercise of judicial power vested in the court by Article 6, Section 139 of the Alabama Constitution, that said Negro defendant is a member of a class of eligible qualified electors, and that Negroes have been intentionally, and systematically excluded from participating in the electoral selection of judges required by Section 152 of the Alabama Constitu-

tion and as a consequence thereof the imposition of judicial power over defendant Negro member of said systematically excluded class of qualified electors by a judge not lawfully elected results in a taking of defendant's property without due process of law as guaranteed to defendant under the constitution and laws of the State of Alabama and the Federal Constitution, and deprives defendant of the equal protection of the law guaranteed him under the Fourteenth Amendment to the United States Constitution.

29. The record is so devoid of evidentiary support of the allegations alleged in the complaint, in that the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the Court against the defendant in the amount of $500,000.00 deprived the defendant of due process of law in violation of the Constitution and laws of the State of [fol. 2088] Alabama.

30. The record is so devoid of evidentiary support of the allegations alleged in the complaint, in that the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the Court against the defendant in the amount of $500,000.00 deprived the defendant of due process of law in violation of the Fourteenth Amendment to the United States Constitution.

31. The record is so devoid of evidentiary support of the allegations alleged in the complaint, in that the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the court against the defendant in the amount of $500,000.00 deprived this defendant of his property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

32. The verdict of the jury and the decision of the Court against the defendant in the amount of $500,000.00 is not supported by any evidence, and, as such, it deprives the defendant of his property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

33. The verdict of the jury and the decision of the Court were not sustained by the great preponderance of the evidence.

34. The verdict of the jury and the decision of the court were not sustained by the great preponderance of the evidence, as follows:

(a) The evidence showed clearly that the defendant did not publish nor cause to be published the advertisement which is the basis of this suit.

(b) The evidence showed clearly that defendant did not give his consent for his name to be placed on the advertisement which advertisement is the basis of this suit.

(c) The evidence showed clearly that defendant had no prior knowledge that said advertisement was going to be published.

(d) The plaintiff's evidence failed to show any causal connection between the defendant and the alleged libelous matter stated in the complaint.

(e) There is no evidence in the record to show that the defendant ratified the alleged libelous matter contained in the complaint.

35. That the verdict of the jury and the decision of the Court is contrary to law in that plaintiff is an official of the Government of Alabama and that the institution of this libel action for alleged defamation of plaintiff governmental official and the consequent imposition of damages upon defendant is an unconstitutional use of the judicial [fol. 2089] machinery of the State of Alabama infringing upon defendant's freedom of speech and association, viola-

tive of defendant's constitutional right under the First Amendment as incorporated into the Fourteenth Amendment to the Federal Constitution, in that said judgment of the court was imposed on defendant because of his well known past and present activities and views on civil rights, said view being diametrically opposed to those of plaintiff; said decision of the court having the practical effect of deterring and/or discouraging defendant's exercise of his constitutionally protected political rights of speech, press and association.

36. For that the verdict of the jury is contrary to the law and evidence in the case.

37. For that the verdict of the jury is not sustained by the great preponderance of the evidence and is contrary to both the law and the facts in the case.

38. For that the verdict of the jury is contrary to the law in the case.

39. For that the verdict of the jury is contrary to the facts in the case.

40. For that the verdict of the jury and the judgment entered thereon are contrary to the great weight and preponderance of the evidence in this case.

41. For that the verdict of the jury is excessive in that it is reported to have been the largest verdict ever rendered by a jury in the State of Alabama.

42. For that the verdict of the jury is so excessive as to shock the conscience of the court and was a result of bias, passion, and prejudice against the defendants.

43. For that the verdict of the jury is excessive and a result of bias, passion, and prejudice against the defendants.

44. There existed an irregularity in the proceedings of the Court by which the party defendant was prevented from having a fair trial.

45. There existed an irregularity in the proceedings of the jury by which the party defendant was prevented from having a fair trial.

46. There existed an irregularity in the proceedings by the prevailing party, by which the defendant was prohibited from having a fair trial.

47. There existed an irregularity in an order of the Court by which the Defendant was prevented from having a fair trial.

48. There existed in the case an abuse of discretion of the Court by which the defendant was prevented from having a fair trial.

[fol. 2090] 49. The jury in the cause was guilty of a misconduct during the trial of the case.

50. The prevailing party was guilty of misconduct in the trial of the case.

51. For that during the trial an error of law occurred which was excepted to by the defendant.

52. For that during the trial an error of law occurred which was excepted to by the defendant, that is the failure of the Court to make special findings of the issues of the cause in the case after being asked to do so by the defendant in the cause.

53. For that the Court abused its discretion in denying the defendant's request for special findings of the issues in this cause in that the defendant requested that compensatory damages and punitive damages be assessed separately in the cause and the Court refused defendant's request for such separate findings and the defendant was thereby prevented from having a fair trial of this cause.

54. For that the Court abused its discretion in denying the defendant's request for special findings of the issues in this cause.

55. For that all of the evidence produced at the trial relating to damages indicated that the plaintiff suffered no damage as a result of any action on the part of this defendant.

56. For that the trial Court erred in admitting in evidence over the defendant's objection the testimony of the

plaintiff's witness Grover Hall as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

57. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Arnold Blackwell as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

58. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness, Mr. William McDonald as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully [fol. 2091] appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

59. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. Harry Kaminsky as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

60. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. H. M. Price, Sr., as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record which record has not been completed by the court reporter as of this date.

61. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. William Parker as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

62. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. Horace D. White as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Vernon Z. Crawford, 570 Davis Ave., Mobile, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough, Montgomery, Alabama,

Attorneys for Defendant, By: Solomon S. Seay, Jr.

[fol. 2092]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

CONTINUANCE OF MOTION—December 2, 1960

The foregoing motion was presented to me on this the 2nd day of December, 1960, and it is hereby continued to the 16 day of December, 1960, at 11 A.M. for hearing. Execution is hereby stayed by the Court during the pendency of this motion.

Walter B. Jones, Circuit Judge, 15th Judicial Circuit of Alabama.

Certificate of Service (omitted in printing).

December 16, 1960—Motion continued for hearing at 10:00 A.M. January 14, 1960.

Walter B. Jones, Judge.

[File endorsement omitted]

[fol. 2093]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Court Met Pursuant to Adjournment

Present The Honorable Walter B. Jones, Judge Presiding

[Title omitted]

ORDER CONTINUING MOTION FOR NEW TRIAL—December 16, 1960

This day came the parties by attorneys and the motion of the defendant, S. S. Seay, Sr., to set aside the verdict of the jury and the judgment of the Court entered thereon and to grant him a new trial herein, be and the same is hereby continued until January 14, 1961 at 10:00 A. M.

[fol. 2094]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF DEFENDANT, FRED L. SHUTTLESWORTH FOR NEW TRIAL—Filed December 2, 1960

Comes now the Defendant, Fred L. Shuttlesworth, in the above styled cause and moves the Court to set aside the verdict of the jury heretofore returned and the judgment rendered thereon in this Court on, to-wit: November 3, 1960, and to grant a new trial of the issues herein and, as grounds therefor, sets forth and assigns, separately and severally, the following:

1. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 1. I charge you gentlemen of the jury, to find a verdict in favor of the defendant, Fred L. Shuttlesworth."

2. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 2. I charge you, gentlemen of the jury, that if you find that the defendant, Fred L. Shuttlesworth did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him.

3. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 3. I charge you, gentlemen of the jury that if you find that the defendant Fred L. Shuttlesworth did not consent to the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

4. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 4. I charge you, gentlemen of the jury, that if you find that the defendant, Fred L. Shuttlesworth did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

5. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 5. I charge you, gentlemen of the jury, that if you find that the defendant, Fred L. Shuttlesworth, did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict for him."

6. For that during the trial an error of law occurred [fol. 2095] which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 6. I charge you, gentlemen of the jury, that if from the evidence you find that the defendant, Fred L. Shuttlesworth, did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him."

7. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the defendant, Fred L. Shuttlesworth was the author or the publisher of the advertisement which appeared in the New

York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said defendant."

8. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in this cause:

"Charge No. 9. I charge you, gentlemen of the jury, to constitute a libel, there must be a publication as well as a writing, and if the publication was made without the consent of the defendant, Fred L. Shuttlesworth, the offense is not complete as to him and you must return a verdict in favor of him."

9. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 11. I charge you, gentlemen of the jury, that if you find from the evidence that the defendant, Fred L. Shuttlesworth, had no knowledge of the writing or publication of the advertisement, prior to publication, that appeared in the New York Times, dated Tuesday, March 29, 1960, you must return a verdict for the said defendant."

10. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 12. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the defendant, Fred L. Shuttlesworth, directly or indirectly, or through some other person authorized to act for him, published or consented to the publication of the statements [fol. 2096] complained of which appeared in the New York Times on March 29, 1960, and unless from the evidence you are convinced that said defendant did directly or indirectly, or through some other person authorized to act for him, published or consented to the publication of said

statements, then you must return a verdict for the defendant, Fred L. Shuttlesworth.

11. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 13. I charge you, gentlemen of the jury, that if you believe from the evidence that the defendant, Fred L. Shuttlesworth, did not authorize the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said defendant."

12. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 14. Gentlemen of the jury, if you believe from the evidence that the defendant, Fred L. Shuttlesworth, did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant."

13. For that during the trial an error of law occurred which was excepted to by the defendant, in that the court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 16. I charge you, gentlemen of the jury, if from the evidence you believe that the defendant, Fred L. Shuttlesworth, did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29, 1960, then as a matter of law, there was no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant."

14. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court

refused to give the following written charge requested by the defendant in the cause:

"Charge No. 17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never authorized any one to affix his name to the advertisement which is the subject matter of this suit and if you further believe from the evidence that the plaintiff wrote a letter to the defendant demanding a retraction of certain [fol. 2097] alleged libelous matter contained in said advertisement, and if you further believe from the evidence that the defendant did not reply to the plaintiff's letter, I charge you as a matter of law that the defendant's failure to reply to plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the defendant to reply to plaintiff's letter, and you must return a verdict for the defendant, Fred L. Shuttlesworth."

15. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant, Fred L. Shuttlesworth."

16. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant, Fred L. Shuttlesworth, consented to the use of his name in connection with the publication of the advertisement complained of, you must find for said defendant."

17. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court refused to give the following written charge requested by the defendant in the cause:

"Charge No. 20. I charge you gentlemen of the jury, that unless on the evidence you are convinced that the defendant, had knowledge of the writing or publication of the advertisement complained of, prior to publication in the New York Times, dated Tuesday, March 29, 1960, you must find for the defendant."

18. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court gave the following oral charge to the jury: "Now, the Court is of the opinion and so charges you, gentlemen of the jury, that the matter complained of in plaintiff's Exhibit No. 347, that's the controversial ad which you will have before you, and parts of which are set out in the Counts here in the Complaint, belongs to that class of defamation called in law, libel per se."

19. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court gave the following oral charge to the jury: "We can say, as part of the law in this case, that a publication is libelous per se when they are such as to degrade the plaintiff in the estimation of his friends and the people of the place [fol. 2098] where he lives, as injure him in his public office, or impute misconduct to him in his office, or want or official integrity, or want of fidelity to a public trust or such as will subject the plaintiff to ridicule or public distrust. All those kind of charges are called, libelous per se."

20. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court gave the following oral charge to the jury: "Now, it is the contention of the plaintiff here that although you may believe, as to the four individual defendants, that they did not sign this advertisement and did not authorize it, yet it is the contention of the plaintiff, Sullivan, that the four individuals, the four individual defendants after knowing of the publication of the advertisement and after knowing of its content, ratified the use of their names, that is, they approved and sanctioned this advertisement. In other words, the plaintiff, Sullivan, insists that there was a ratification of the advertisement and the use of their names

as signers of the advertisement by the four individual defendants and we here define ratification as the approval by a person of a prior act which did not bind him but which was professedly done on his account or in his behalf whereby the act, the use of his name, the publication, is given effect as if authorized by him in the very beginning. Ratification is really the same as a previous authorization and is a confirmation or approval of what has been done by another on his account. Now, it is for you twelve jurors to say from all the evidence whether the four defendants ratified the advertisement now before you, that is, ratified that advertisement as I have defined the word ratification to you."

21. For that during the trial an error of law occurred which was excepted to by the defendant, in that the Court gave the following oral charge to the jury: "We here define ratification as the approval by a person of a prior act which did not bind him but which was professedly done on his account or in his behalf whereby the act, the use of his name, the publication, is given effect as if authorized by him in the very beginning."

22. The Court erred in overruling defendant's demurrers to the complaint and to each count thereof.

23. The Court erred in overruling defendant's amended demurrers to the complaint and to each count thereof.

24. The Court erred in denying and overruling the defendant's motion to exclude plaintiff's evidence, said motion having been made at the conclusion of the plaintiff's case.

25. The Court erred in denying and overruling the defendant's motion to exclude the plaintiff's evidence, said motion having been made at the conclusion of the introducing of all of the evidence in the case.

[fol. 2099] 26. There existed an irregularity in the proceedings of the Court by which the part defendant was prevented from having a fair trial in that the Court is a member of the Board of Jury Supervisors of Montgomery, Alabama; and that said Board selected jurors pursuant to Act No. 118 of March 8, 1939, said Act being

unconstitutional, said selection of jurors thereunder by the Court being in violation of Article I, Section 11 of Alabama Code of 1901 and the Code of Alabama (1940) Title 7, Section 260, in that the Court as a member of the Board by so selecting those persons who are to decide the case decided both the facts and the law.

27. There existed an irregularity in the proceedings of the Court by which the party defendant was prevented from having a fair trial in that defendant was subjected to the exercise of judicial power before a tribunal which required its very facilities to be segregated on the basis of race and color and that the imposition of judicial power upon defendant in a segregated tribunal denied to defendant his right to due process and equal protection of the law as guaranteed him under the Alabama and Federal Constitutions.

28. There existed an irregularity in the proceedings of the Court which prevented the part defendant from having a fair trial in that Alabama's Constitutional Amendment of 1850 required the popular election of judges, said amendment being codified in Section 152 of the Alabama Constitution of 1901, and that under Section 152 a judge's lawful election to the court by all qualified electors is constitutionally pre-requisite to the lawful exercise of judicial power vested in the court by Article 6, Section 139 of the Alabama Constitution; that said Negro defendant is a member of a class of eligible qualified electors, and that Negroes have been intentionally, and systematically excluded from participating in the electoral selection of judges required by Section 152 of the Alabama Constitution and as a consequence thereof the imposition of judicial power over defendant Negro member of said systematically excluded class of qualified electors by a judge not lawfully elected results in a taking of defendant's property without due process of law as guaranteed to defendant under the constitution and laws of the State of Alabama and the Federal Constitution; and deprives defendant of the equal protection of the law guaranteed him under the Fourteenth Amendment to the United States Constitution.

29. The record is so devoid of evidentiary support of the allegations alleged in the complaint, in that the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the [fol. 2100] judgment of the Court against the defendant in the amount of $500,000.00 deprived the defendant of due process of law in violation of the Constitution and laws of the State of Alabama.

30. The record is so devoid of evidentiary support of the allegations alleged in the complaint, in that the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the Court against the defendant in the amount of $500,000.00 deprived the defendant of due process of law in violation of the Fourteenth Amendment to the United States Constitution.

31. The record is so devoid of evidentiary support of the allegations alleged in the complaint, in that the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the court against the defendant in the amount of $500,000.00 deprived this defendant of his property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

32. The verdict of the jury and the decision of the Court against the defendant in the amount of $500,000.00 is not supported by any evidence and, as such, it deprives the defendant of his property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

33. The verdict of the jury and the decision of the Court were not sustained by the great preponderance of the evidence.

34. The verdict of the jury and the decision of the court were not sustained by the great preponderance of the evidence, as follows:

(a) The evidence showed clearly that the defendant did not publish nor cause to be published the advertisement which is the basis of this suit.

(b) The evidence showed clearly that defendant did not give his consent for his name to be placed on the advertisement, which advertisement is the basis of this suit.

(c) The evidence showed clearly that defendant had no prior knowledge that said advertisement was going to be published.

(d) The plaintiff's evidence failed to show any causal connection between the defendant and the alleged libelous matter stated in the complaint.

(e) There is no evidence in the record to show that the defendant ratified the alleged libelous matter contained in the complaint.

35. That the verdict of the jury and the decision of the Court is contrary to law in that plaintiff is an official of the Government of Alabama, and that the institution of this libel action for alleged defamation of plaintiff govern-
[fol. 2101] mental official and the consequent imposition of damages upon defendant is an unconstitutional use of the judicial machinery of the State of Alabama infringing upon defendant's freedom of speech and association, violative of defendant's constitutional right under the First Amendment as incorporated into the Fourteenth Amendment to the Federal Constitution, in that said judgment of the court was imposed on defendant because of his well known past and present activities and views on civil rights, said view being diametrically opposed to those of plaintiff; said decision of the Court having the practical effect of deterring and/or discouraging defendant's exercise of his constitutionally protected political rights of speech, press and association.

36. For that the verdict of the jury is contrary to the law and evidence in the case.

37. For that the verdict of the jury is not sustained by the great preponderance of the evidence and is contrary to both the law and the facts in the case.

38. For that the verdict of the jury is contrary to the law in the case.

39. For that the verdict of the jury is contrary to the facts in the case.

40. For that the verdict of the jury and the judgment entered thereon are contrary to the great weight and preponderance of the evidence in the case.

41. For that the verdict of the jury is excessive in that it is reported to have been the largest verdict ever rendered by a jury in the State of Alabama.

42. For that the verdict of the jury is so excessive as to shock the conscience of the court and was a result of bias, passion and prejudice against the defendant.

43. For that the verdict of the jury is excessive and as a result of bias, passion, and prejudice against the defendants.

44. There existed an irregularity in the proceedings of the Court by which the party defendant was prevented from having a fair trial.

45. There existed an irregularity in the proceedings of the jury by which the party defendant was prevented from having a fair trial.

46. There existed an irregularity in the proceedings by the prevailing party, by which the defendant was prohibited from having a fair trial.

47. There existed an irregularity in an order of the Court by which the defendant was prevented from having a fair trial.

48. There existed in the case an abuse of discretion of [fol. 2102] the Court by which the defendant was prevented from having a fair trial.

49. The jury in the cause was guilty of a misconduct during the trial of the case.

50. The prevailing party was guilty of misconduct in the trial of the case.

51. For that during the trial an error of law occurred which was excepted to by the defendant.

52. For that during the trial an error of law occurred which was excepted to by the defendant, that is the failure of the Court to make special findings of the issues of the cause in the case after being asked to do so by the defendant in the cause.

53. For that the Court abused its discretion in denying the defendant's request for special findings of the issues in this cause in that the defendant requested that compensatory damages and punitive damages be assessed separately in the cause and the Court refused Defendant's request for such separate findings and the defendant was thereby prevented from having a fair trial of this cause.

54. For that the Court abused its discretion in denying the defendant's request for special findings of the issues in this cause.

55. For that all of the evidence produced at the trial relating to damages indicated that the plaintiff suffered no damage as a result of any action on the part of this defendant.

56. For that the trial Court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Grover Hall as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

57. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness, Arnold Blackwell, as to his opinion that the advertisement, which advertisement is the basis of this

suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

58. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. William McDonald as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his [fol. 2103] opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

59. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. Harry Kaminsky as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

60. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. H. M. Price, Sr., as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record which record has not been completed by the court reporter as of this date.

61. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the plaintiff's witness Mr. William Parker as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

62. For that the trial court erred in admitting in evidence over the defendant's objection the testimony of the

plaintiff's witness, Mr. Horace D. White as to his opinion that the advertisement, which advertisement is the basis of this suit, was of and concerning the plaintiff and his opinion as to other matters, which matters will more fully appear from the transcript of the record, which record has not been completed by the court reporter as of this date.

Respectfully submitted,

Fred. D. Gray, 34 No. Perry Street, Montgomery, Alabama;

Vernon Z. Crawford, 570 Davis Avenue, Mobile, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Attorneys for Defendant.

By: Solomon S. Seay, Jr., Attorney for named defendant.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

CONTINUANCE OF MOTION—December 2, 1960

The Foregoing motion was presented to me on this the 2nd day of December, 1960, and it is hereby continued to the 16 day of December, 1960, at 11 AM for hearing. Execution is hereby stayed by the Court during the pendency [fol. 2104] of this motion.

Walter B. Jones, Circuit Judge, 15th Judicial Circuit of Alabama.

Certificate of service (omitted in printing).

December 16, 1960. Motion Continued for Hearing at 10:00 AM. Jan. 14, 1961.

Walter B. Jones, Judge.

[File endorsement omitted]

[fol. 2105]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Court Met Pursuant to Adjournment

Present The Honorable Walter B. Jones, Judge Presiding

[Title omitted]

ORDER CONTINUING MOTION FOR NEW TRIAL—
December 16, 1960

This day came the parties by attorneys and the motion of the defendant, Fred L. Shuttlesworth, to set aside the verdict of the jury and the judgment of the Court entered thereon and to grant him a new trial herein, be and the same is hereby continued until January 14, 1961 at 10:00 A. M.

[fol. 2106]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

SUPERSEDEAS BOND FILED BY THE NEW YORK TIMES COMPANY AND APPROVED APRIL 13, 1961

Know All Men by These Presents, That we the New York Times Company, a Corporation of the State of New York, and St. Paul Fire and Marine Insurance Company, a Corporation organized under the laws of the State of Minnesota having its principal office in the City of St. Paul, State of Minnesota, and having an office and usual place of business in the Jackson Building, Birmingham 3, Alabama, are held and firmly bound unto L. B. Sullivan in the sum of One Million Five Hundred and No/100 ($1,000,500.00) Dollars, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our heirs, executors and administrators, jointly, severally and firmly by these presents, and as part of this undertaking we hereby waive all our rights under the Constitution and Laws of the State of Alabama, to have any of our property, real or personal, exempt from levy and sale in satisfaction hereof.

Sealed with our seals, and dated this 7th day of April, 1961.

Whereas, at the fall term, 1960, of the Circuit Court of Montgomery County, of and for said County, on, to-wit: the 3rd day of November, 1960, the said L. B. Sullivan recovered a judgment in said Court against the New York Times Company, et al. for the sum of Five Hundred Thousand and No/100 ($500,000.00) Dollars, debt and damages, and the further sum of Five Hundred and No/100 ($500.00) Dollars, the cost in that behalf expended; and whereas, on this day the said The New York Times Company as such defendant, has made application for an appeal from said judgment to the next term of the Supreme Court of Alabama to be holden of and for said State, to reverse said judgment, and also for a supersedeas of the execution of said judgment, which has been granted on entering into this bond.

Now, Therefore, the condition of the foregoing obligation is such, that if the said The New York Times Company shall prosecute its said appeal to effect, and satisfy such judgment as the Supreme Court may render in this case, then the said obligation to be null and void, otherwise to remain in full force and effect.

The New York Times Company, By: F. A. Cox, Treasurer;

St. Paul Fire and Marine Insurance Co., By: Gordon M. Earhuff, Attorney-in-fact;

A. B. Chapman, Alabama Resident Agent.

Approved: This 13th day of April, 1961.
John R. Matthews, Clerk.

[fol. 2107] [File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

NOTICE OF WRIT OF ERROR—April 13, 1961

To Any Sheriff of the State of Alabama—Greeting:

You are hereby commanded to summon Steiner, Crum and Baker and Calvin Whitesell, Attorneys of Record of L. B. Sullivan to appear at the next term of the Supreme Court of said State, then and there to defend an appeal which The New York Times Company, a corporation has this day sued out, returnable to said court to reverse a judgment which the said L. B. Sullivan at the November Term, 1960, of the Circuit Court of Montgomery County, recovered against the said The New York Times Company, a corporation, Ralph D. Abernathy, J. E. Lowery, S. S. Seay, Sr. and Fred L. Shuttlesworth for the sum of $500,000.00—Five Hundred Thousand and No/100 Dollars, and make immediate return of this Writ, etc.

Witness, John R. Matthews, Clerk of said Circuit Court, this 13 day of April, A. D., 1961.

John R. Matthews, Clerk.

We hereby accept service of a copy of the within notice of appeal and waive further service of the same by the Sheriff.

This 13 day of April, 1961.

Steiner, Crum & Baker, By: M. R. Nachman, Jr.

Calvin Whitesell.

[fol. 2108]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

NOTICE OF JOINING IN APPEAL—Filed April 27, 1961

Come the defendant, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery, in the above styled cause and give notice that the above named individual defendants hereby join in the appeal heretofore filed on April 12, 1961, by the co-defendant, The New York Times Company, a Corporation, appealing from the judgment of the Circuit Court of Montgomery County, Alabama, rendered on November 3, 1960, and also from the ruling of said Court that the individual defendants' motion for a New Trial was no longer before the court because of the alleged failure to continue the motion for a new trial by attorneys for the individual defendants.

Charles S. Conley, 530 So. Union St., Montgomery 4, Alabama;

Vernon Z. Crawford, 570 Davis Avenue, Mobile, Alabama;

Solomon S. Seay, Jr., 29 N. McDonough St., Montgomery, Alabama;

Attorneys for Defendants, By: Charles S. Conley.

[File endorsement omitted]

[fol. 2109]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

NOTICE TO UNITE IN APPEAL—Filed April 27, 1961

To Any Sheriff of the State of Alabama—Greetings:

Whereas, the Defendant, The New York Times Company, a corporation, on the 13th day of April, 1961, has taken an appeal to the Supreme Court of Alabama from the judgment rendered in this Court on, to-wit, the 3rd day of November, 1960, in favor of L. B. Sullivan against The New York Times Company, a cor[illegible]n, Ralph D. Abernathy, J. E. Lowery, S. S. Seay, Sr., [illegible] Fred L. Shuttlesworth; and

Whereas, said appeal has not been taken in the name of the Defendants, Ralph D. Abernathy, J. E. Lowery, S. S. Seay, Sr., and Fred L. Shuttlesworth and the aforesaid four individual Defendants have not joined in the appeal;

Now, Therefore, you are commanded to summon the said Ralph D. Abernathy, J. E. Lowery, S. S. Seay, Sr., and Fred L. Shuttlesworth to appear before the Supreme Court of Alabama at the time to which the said appeal is returnable and unite in said appeal if they see proper to do so.

Witness my hand this 27 day of April, 1961.

John B. Matthews, Clerk of the Circuit Court.

I hereby accept service of a copy of the above citation and waive further service by the Sheriff, this April 27, 1961.

Charles S. Conley, As Attorney for defendants, Abernathy, Seay, Lowery and Shuttlesworth.

[File endorsement omitted]

[fol. 2110]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

On Appeal to Supreme Court of Alabama

[Title omitted]

CERTIFICATE OF APPEAL—December 14, 1961

I, John R. Matthews, Clerk of the Circuit Court of Montgomery County, hereby certify that in said Court on the 3rd day of November, 1960, in a trial before a jury, a verdict was rendered in favor of L. B. Sullivan and against The New York Times Company, a corporation, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr. and J. E. Lowery, for the sum of $500,000.00, and that judgment was entered thereon against all of said parties for the sum of $500,000.00.

I further certify that The New York Times Company, a corporation, filed its motion to set aside the verdict of the jury and the judgment of the Court entered thereon and to grant it a new trial and that on the 17th day of March, 1961, said motion for a new trial was overruled and that on the 13th day of April, 1961, the said New York Times Company, a corporation, gave notice of appeal from the judgment of said Court to the Supreme Court of Alabama and did supersede said judgment by filing a Supersedeas Bond with St. Paul Fire & Marine Insurance Company as surety thereon, which said bond has been duly approved.

Witness my hand and the seal of said Court is hereto affixed, this 14 day of April, 1961.

John R. Matthews, Clerk, Circuit Court of Montgomery County.

[fol. 2110a]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

MOTION FOR EXTENSION OF TIME IN WHICH TO FILE TRANSCRIPT IN CIRCUIT COURT—Filed June 8, 1961

Comes now the defendant, The New York Times Company, and shows unto this Honorable Court as follows:

1. This defendant, The New York Times Company, has heretofore taken an appeal in the above styled cause and in accordance with the provisions of the Code of Alabama of 1940, the court reporter's transcript of the proceedings in said cause is due to be filed with the Clerk of the Circuit Court of Montgomery County on the 12th day of June, 1961.

2. The proceedings which the said transcript covers were lengthy and the transcript is voluminous and consists of approximately two thousand pages.

3. On the 26th day of May, 1961, the court reporter notified attorneys for this defendant that he had completed the said transcript and in accordance with that notification, attorneys for this defendant had delivered to them a copy of said transcript and since said transcript was delivered attorneys have been engaged in checking the transcript for accuracy and completeness but due to the size and length of said transcript and due to attorneys for this defendant being engaged in the trial of cases in various courts in the State of Alabama, and engaged in the preparation of briefs for the Appellate Courts for the State of Alabama, it will be impossible to check the transcript completely and thoroughly before the 12th day of June, 1961.

4. A complete and thorough check of the transcript before the date it is filed in this court will result in a saving of the time of this court in that it may prevent the necessity of filing exceptions to the transcript upon which this court must rule.

Wherefore Premises Considered this defendant moves this Honorable Court to extend the time for filing of said transcript with the Clerk of the Circuit Court of Montgomery County.

Roderick M. MacLeod, Jr., Beddow, Embry & Beddow, Attorneys for the defendant, The New York Times Company.

[File endorsement omitted]

[fol. 2110b]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

ORDER ON MOTION FOR EXTENSION OF TIME—June 8, 1961

The motion of the defendant, The New York Times Company, for extension of time in which to file the transcript in the above styled cause with the Clerk of the Circuit Court of Montgomery County, having been presented to the Court and good cause being shown, it is therefore,

Ordered, adjudged and decreed that the time for filing the transcript in the above styled cause with the Clerk of the Circuit Court of Montgomery County, Alabama, is hereby extended to and including the 26th day of June, 1961. It is understood that no further extension of time for filing the transcript in the Clerk's office will be moved for or granted. Plaintiff duly and legally excepts to this ruling of the court.

This 8 day of June, 1961.

Walter B. Jones, Circuit Judge.

[File endorsement omitted]

[fol. 2110c]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

At Law.

[Title omitted]

STIPULATION AS TO CHANGES, ETC. IN RECORD—June 23, 1961

Comes now the Appellant, The New York Times Company, and the Appellee by their respective Attorneys and stipulate that at any time after the Court Reporter's Transcript of the Proceedings in the above captioned cause is filed in the Office of the Circuit Clerk and before it is filed in the Office of the Clerk of the Supreme Court of Alabama, either party may have the Court Reporter make changes, corrections or additions to the transcript and that in the event the parties cannot agree as to what changes, additions or corrections should be made, either party may submit the matter to the Circuit Judge for determination just as if exceptions had been made to the transcript within the ten day period after it is filed as prescribed by the Code of Alabama.

This stipulation specifically applies but is not limited to the insertion in the transcript of copies of four registered mail return receipts introduced by the plaintiff-appellee on the trial on the merits and numbered as Plaintiff's Exhibits Nos. 359, 360, 361, and 362.

This the 23rd day of June, 1961.

Roderick M. MacLeod; Steiner, Crum & Baker.

[fol. 2111] Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 2113]

IN THE SUPREME COURT OF ALABAMA

No. .....

THIRD DIVISION

THE NEW YORK TIMES COMPANY, a Corporation, Appellant,

vs.

L. B. SULLIVAN, Appellee.

ASSIGNMENTS OF ERROR OF THE NEW YORK TIMES COMPANY

Comes the Appellant, The New York Times Company, a corporation in this cause and says there is manifest error in the trial of this cause and manifest error in the record of the trial of this cause and as grounds for such error sets down and assigns the following, separately and severally:

1. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying the Motion of this defendant, as amended, to quash service of process upon it in this case. (Tr. 40)

2. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon Don McKee as an alleged agent of this defendant. (Tr. 40)

3. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying the Motion as amended of this defendant to quash service of process upon it in holding in said order, judgment or decree that this defendant had made a general appearance in this cause. (Tr. 40)

4. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon it had under the provisions of Title 7, Section 199(1), Code

of Alabama of 1940, and holding therein that service of process on this defendant was valid under the provisions of said Title 7, Section 199(1), Code of Alabama, 1940. (Tr. 40)

5. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon it in holding in said order, judgment or decree that this defendant was "doing business" in the State of Alabama. [fol. 2114] (Tr. 40)

6. For that the trial court erred in its ruling that this defendant had the burden of going forward with the evidence on its Motion to quash service of process upon it, to which ruling this defendant duly and legally excepted. (Tr. 186)

7. For that the trial court erred in overruling this defendant's objection to the introduction in evidence of plaintiff's exhibit No. 78, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 184)

8. For that the trial court erred in overruling this defendant's demurrers and additional demurrers to plaintiff's complaint. (Tr. 86)

9. For that the trial court erred in overruling this defendant's demurrers as last amended to plaintiff's complaint. (Tr. 86)

10. For that the trial court erred in overruling this defendant's demurrers and additional demurrers to Count One of plaintiff's complaint. (Tr. 86)

11. For that the trial court erred in overruling this defendant's demurrers as last amended to Count One of plaintiff's complaint. (Tr. 86)

12. For that the trial court erred in overruling this defendant's demurrers and additional demurrers to Count Two of plaintiff's complaint. (Tr. 86)

13. For that the trial court erred in sustaining plaintiff's demurrers to this defendant's Plea Six. (Tr. 86)

14. For that the trial court erred in its ruling refusing to allow this defendant to propound the following question to the jury venire on voir dire:

> "1. I will ask you, gentlemen, even though at the close of this case that you may find a certain statement contained in the advertisement made the basis of the plaintiff's complaint in this case in his cause of action are not accurate or correct but the evidence discloses that the advertisement did not refer to the plaintiff, do you entertain any conviction, opinion, or predisposition of mind which would compel you to return a verdict in favor of the plaintiff, or which would prevent your returning a verdict in favor of the defendant, The New York Times Company, a corporation?"

[fol. 2115] to which ruling this defendant duly and legally excepted. (Tr. 1694-95)

15. For that the trial court erred in its ruling refusing to allow this defendant to propound the following question to the jury venire on voir dire:

> "2. Have any of you gentlemen ever been a plaintiff in a lawsuit in this Court any number of times, that is to say, have you filed a suit seeking recovery of money from another person, firm, or corporation?"

to which ruling this defendant duly and legally excepted. (Tr. 1695)

16. For that the trial court erred in its ruling refusing to allow this defendant to propound the following question to the jury venire on voir dire:

> "3. I will ask you, gentlemen, if at the close of the evidence in this case and the evidence shows that The New York Times Company was not actuated by malice in publishing this paid advertisement, would you refuse to award damages to punish The New York Times, that is to say, would you refuse to award punitive damages?"

to which ruling this defendant duly and legally excepted. (Tr. 1695)

17. For that the trial court erred in its ruling refusing to allow this defendant to propound the following question to the jury venire on voir dire:

> "4. Is there any reason, without disclosing that reason to me, that would tend to embarrass you, or embarrass you in any way, or cause you to hesitate to return a verdict in favor of The New York Times Company, a corporation, in this case?"

to which ruling this defendant duly and legally excepted. (Tr. 1695)

18. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Grover C. Hall, Jr.:

> "Q. I will ask you, Mr. Hall, whether you associate the statements contained in that paragraph with any person or persons?"

to which ruling this defendant duly and legally excepted. (Tr. 1723)

19. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Grover C. Hall, Jr.:

> "Q. Referring to the statements contained in the paragraph of the ad to which I referred you, do you associate those statements with any person or persons?"

to which ruling this defendant duly and legally excepted. (Tr. 1724)

20. For that the trial court erred in refusing to allow the [fol. 2116] defendant to inquire on voir dire into the competency of the witness, Arnold D. Blackwell, to testify, to which ruling this defendant duly and legally excepted. (Tr. 1733-34)

21. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Arnold D. Blackwell:

"Q. Do the statements contained in that paragraph associate themselves in your mind with any person or group of persons?"

to which ruling this defendant duly and legally excepted. (Tr. 1734-35)

22. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Arnold D. Blackwell:

"Q. Now, if you believed the statements in that paragraph to be correct, Mr. Blackwell, and true, would they affect your opinion of the Police Commissioner in any way?"

to which ruling this defendant duly and legally excepted. (Tr. 1736)

23. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Arnold D. Blackwell:

"Q. . . . I ask you there whether those statements associate themselves in your mind with any person or persons."

to which ruling this defendant duly and legally excepted. (Tr. 1737)

24. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, William H. MacDonald:

"Q. Now, going back to March 6th of this year, 1960, Mr. MacDonald, did you have occasion to observe a demonstration or a near riot that took place on Dexter Avenue on Sunday, March 6th?"

to which ruling this defendant duly and legally excepted. (Tr. 1748-49)

25. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harry W. Kaminsky:

"Q. Now, Mr. Kaminsky, do you associate the statements and material contained in that paragraph that I have just showed you with any person or persons?"

to which ruling defendant duly and legally excepted. (Tr. 1755)

[fol. 2117] 26. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harry W. Kaminsky:

"Q. If you believed the statements contained in that paragraph to be correct, Mr. Kaminsky, would that affect in any way your opinion of the Police Commissioner?"

to which ruling this defendant duly and legally excepted. (Tr. 1755)

27. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, H. M. Price, Sr.:

"Q. Mr. Price, did it—when you read the statements contained in those two paragraphs, do they associate themselves in your mind with any person? Those statements of events?"

to which ruling this defendant duly and legally excepted. (Tr. 1765-66)

28. For that the trial court erred in overruling this defendant's objection to the folowing question propounded by the plaintiff to the witness, H. M. Price:

"Q. Mr. Price, if you believed the statements contained in those two paragraphs to be true, regardless of whether you think them to be true, if you believed them to be true, would that affect your opinion of Mr. Sullivan—?"

to which ruling this defendant duly and legally excepted. (Tr. 1766)

29. For that the trial court erred in overruling this defendant's Motion to strike the following answer of plaintiff's witness, H. M. Price, Sr.:

"I don't think there is any question about what I would decide. I think I would decide that we probably had a young Gestapo in Montgomery."

to which ruling this defendant duly and legally excepted. (Tr. 1766)

30. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, William M. Parker, Jr.:

"Q. Mr. Parker, do you associate those statements contained in those paragraphs with any person or persons that you know or are acquainted with?"

to which ruling this defendant duly and legally excepted. (Tr. 1770-71)

31. For that the trial court erred in overruling this defendant's objection to the following question propounded [fol. 2118] by the plaintiff to the witness, William M. Parker, Jr.:

"Q. Mr. Parker, on the assumption that you believed those to be true, whether you do or not, but if you did believe them to be true, the statements I have just read, would that affect your opinion of Mr. Sullivan, and if so, state how."

to which ruling this defendant duly and legally excepted. (Tr. 1771)

32. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Horace W. White:

"Q. Did it mean any particular person or persons to you?"

to which ruling this defendant duly and legally excepted. (Tr. 1785)

33. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Horace W. White:

"Q. I will ask you this. If you believe—not saying that you believe or do not believe—but if you believed the material in those paragraphs in this ad, would that affect your opinion of Mr. L. B. Sullivan?"

to which ruling this defendant duly and legally excepted. (Tr. 1785)

34. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Horace W. White:

"Q. In what manner would it affect your opinion?"

to which ruling this defendant duly and legally excepted. (Tr. 1786)

35. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Horace W. White:

"Q. But if you believed the material stated in this ad, would that affect his re-employment?"

to which ruling this defendant duly and legally excepted. (Tr. 1786)

36. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, John R. Matthews:

"Q. Now, where is the first entry in your books which indicated a charge in connection with the incident on March 8th?"

to which ruling this defendant duly and legally excepted. (Tr. 1797-98)

[fol. 2119] 37. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, John R. Matthews:

"Q. Mr. Matthews, do you know of your own knowledge whether there were any other cases in this Court and by this Court I mean the Circuit Court of Montgomery County, Alabama, involving charges arising out of that demonstration on March 8th?"

to which ruling this defendant duly and legally excepted. (Tr. 1803)

38. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, John R. Matthews:

> "Q. Mr. Matthews, do you know of your own knowledge whether Martin Luther King, Jr., was acquitted by a jury in this County on a charge of falsifying his income tax return?"

to which ruling this defendant duly and legally excepted. (Tr. 1803)

39. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, E. Y. Lacy:

> "Q. In the course of your duties, Lt. Lacy, did you have occasion to investigate a bombing which took place in the home of Martin Luther King, Jr., in Montgomery, Alabama?"

to which ruling this defendant duly and legally excepted. (Tr. 1807)

40. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, O. M. Strickland:

> "Q. As connected with the arrest of Martin Luther King, Jr., and state what the circumstances were and what happened on that occasion in your own words."

to which ruling this defendant duly and legally excepted. (Tr. 1814)

41. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, O. M. Strickland:

> "Q. Officer, did you or anyone in your presence on this occasion assault the person of Martin Luther King, Jr.?"

to which ruling this defendant duly and legally excepted. (Tr. 1816)

42. For that the trial court erred in overruling this de-
[fol. 2120] fendant's objection to the following question propounded by the plaintiff to the witness, Frank R. Stewart:

> "Q. Would you state the circumstances of the expulsion of nine students from Alabama State College by the State Board of Education?"

to which ruling this defendant duly and legally excepted. (Tr. 1819)

43. For that the trial court erred in overruling this defendant's objection to the admission into evidence of plaintiff's Exhibit No. 364, to which ruling this defendant duly and legally excepted. (Tr. 1820-23)

44. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Frank R. Stewart:

> "Q. Now, Doctor, I want to read one sentence to you and ask you whether it is true. 'In Montgomery, Alabama, after students sang "My Country Tis of Thee" on the State Capitol steps their leaders were expelled from school.'"

to which ruling this defendant duly and legally excepted. (Tr. 1823-24)

45. For that the trial court erred in overruling this defendant's objection to the admission into evidence of plaintiff's Exhibit No. 365, to which ruling this defendant duly and legally excepted. (Tr. 1825-26)

46. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

> "Q. I call your attention, Mr. Sullivan, to the third paragraph in the left hand column of this ad which reads as follows: 'In Montgomery, Alabama, after students sang "My Country Tis of Thee" on the State Capitol steps their leaders were expelled from school

and truck loads of police armed with shotguns and tear gas ringed the Alabama State College campus.' I ask you if that statement is true or false."

to which ruling this defendant duly and legally excepted. (Tr. 1829)

47. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

"Q. Now, Mr. Sullivan, I call your attention to the next sentence in that same paragraph which reads as follows: 'When the entire student body protested to State authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them [fol. 2121] into submission.' Is that statement true or false?"

to which ruling this defendant duly and legally excepted. (Tr. 1830)

48. For that the trial court erred in overruling this defendant's motion to strike the following testimony of the plaintiff, L. B. Sullivan:

"False, in my opinion it has never happened here in the State of Alabama."

to which ruling this defendant duly and legally excepted. (Tr. 1830)

49. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

"Q. Is that true or false?"

to which ruling this defendant duly and legally excepted.

50. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

"Q. . . . I ask you whether the Police Department has, during your term of office, or at any other time

within your knowledge, bombed Dr. King's home or been a party to it or condoned such action?"

to which ruling this defendant duly and legally excepted. (Tr. 1831)

51. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

"Q. Now, I ask you, Mr. Sullivan, whether to your knowledge, it is accurate that they have arrested him seven times—for speeding, loitering and similar offenses?"

to which ruling this defendant duly and legally excepted. (Tr. 1832)

52. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

"Q. Mr. Sullivan, did you have anything at all to do with procuring the indictment of Martin Luther King on a charge of violating income tax laws of the State of Alabama?"

to which ruling this defendant duly and legally excepted. (Tr. 1833)

53. For that the trial court erred in overruling this defendant's objection to the following question propounded by [fol. 2122] the plaintiff to the witness, L. B. Sullivan:

"Q. Did you testify in that case either before the Grand Jury which indicted him, or before the petty jury which tried him?"

to which ruling this defendant duly and legally excepted. (Tr. 1833)

54. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

"Q. Did you testify with regard to the guilt or innocence of the defendant?"

to which ruling this defendant duly and legally excepted. (Tr. 1834)

55. For that the trial court erred in overruling this defendant's motion to strike the following testimony of the plaintiff, L. B. Sullivan:

> "My testimony during the trial was along the lines in response to the question as to whether or not Dr. King could receive a fair trial here in Montgomery."

to which ruling this defendant duly and legally excepted. (Tr. 1836)

56. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

> "Q. Mr. Sullivan, do you consider the statements that I have just read you from this ad, plaintiff's Exhibit No. 347, refer to you and are associated with you?"

to which ruling this defendant duly and legally excepted. (Tr. 1836)

57. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

> "Q. Do you feel that you have been damaged by these statements?"

to which ruling this defendant duly and legally excepted. (Tr. 1837)

58. For that the trial court erred in overruling this defendant's motion to strike the following testimony of the plaintiff, L. B. Sullivan:

> "As a part of the responsibility of the Police Commissioner and the Commissioner of Public Affairs it is our responsibility to maintain law and order here in Montgomery whether it is at the campus or elsewhere. As far as the expulsion of the students is concerned that responsibility rests with the State Department of Education."

[fol. 2123] to which ruling this defendant duly and legally excepted. (Tr. 1841)

59. For that the trial court erred in overruling this defendant's motion to exclude the plaintiff's evidence in this case and in the alternative, this defendant's motion for a directed verdict, to which ruling this defendant duly and legally excepted. (Tr. 1853)

60. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Gershon T. Aronson:

> "Q. On what basis did you satisfy yourself that he was giving you accurate information about the permission to use the names?"

to which ruling this defendant duly and legally excepted. (Tr. 1864)

61. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Gershon T. Aronson:

> "Q. Do you consider that the statement he has in this letter which is identified as Exhibit B attached to the interrogatories which Mr. Embry showed to you and I will quote from it, 'Please be assured that they have all given us permission to use their names in furthering the work of our Committee.' Do you consider that as being authorization to put their names on an ad which is to appear in a national publication?"

to which ruling this defendant duly and legally excepted. (Tr. 1864)

62. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Gershon T. Aronson:

> "Q. The sentence is 'In Montgomery, Alabama, after students sang "My Country Tis of Thee" on the State Capitol steps their leaders were expelled from school and truck loads of police armed with shotguns and tear gas ringed the Alabama State College Campus.'

Now, does your testimony, I take it as a man with over twenty years of experience in reading ads with ambiguous words that the word 'after' means only after in terms of time and has no cause and effect connotation at law."

to which ruling this defendant duly and legally excepted. (Tr. 1868-69)

63. For that the trial court erred in making the following statement with reference to the witness, Gershon T. Aronson, in the presence and hearing of the jury:

"Well, of course, it probably will be a question for the jury, but this gentleman here is a very high official of the Times and I should think he can testify . . ."

[fol. 2124] to which statement of the Court this defendant duly and legally objected and excepted. (Tr. 1869)

64. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Gershon T. Aronson:

"Q. And that the same people are 'they' throughout. Is that it?"

to which ruling this defendant duly and legally excepted. (Tr. 1870)

65. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Gershon T. Aronson:

"Q. But it is sufficiently unclear so that you cannot today give a clear answer as to what it means, isn't it?"

to which ruling this defendant duly and legally excepted. (Tr. 1871)

66. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Gershon T. Aronson:

"Q. I would like you to tell us if you can, Mr. Aronson, whether that ad—the ad was handed to you on March 23rd and which was published on March 29th,

contained superlative words or phrases as you have just used the term?"

to which ruling this defendant duly and legally excepted. (Tr. 1874)

67. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Gershon T. Aronson:

"Q. I call your attention now to this paragraph which I will read to you. 'If any advertiser makes inaccurate or misleading statements and refuses to correct them the advertising is declined. Further if The Times receives complaints from its readers which, upon investigation, convince the Advertising Acceptability Department that the business practices of the firm are unfair or open to question, the Times declines further announcements of that firm.'"

to which ruling this defendant duly and legally excepted. (Tr. 1875)

68. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, D. Vincent Redding:

"Q. Did you consider that those people were sufficiently familiar with the events in Montgomery, Alabama, purportedly described in that ad so that you [fol. 2125] could rely on what was contained in the ad about Montgomery?"

to which ruling this defendant duly and legally excepted. (Tr. 1889)

69. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harding Bancroft:

"Q. But no check was made into the statements contained in the ad prior to its publication. Is that correct?"

to which ruling this defendant duly and legally excepted. (Tr. 1907)

70. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harding Bancroft:

> "Q. Is it now the position of The New York Times that with the exception of the statement that 'the dining hall was padlocked in an attempt to starve them into submission' that the other statements in the ad that we complain about in this complaint are 'substantially correct' to use the phrase in this letter?"

to which ruling this defendant duly and legally excepted. (Tr. 1908)

71. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harding Bancroft:

> "Q. Now, referring to Exhibit C in the letter demanding a retraction, there are two paragraphs in the ad which are quoted and it is stated in the letter that those are false and defamatory. Then, referring to Exhibit D, your attorneys wrote back and they said that the statements following their investigation—that the statements 'are substantially correct with the sole exception that we find no justification for the statement that the dining hall of the State College was padlocked in an attempt to starve them into submission.' Now what I want to know, sir, is simply this, is it still the position of The New York Times that with one exception that the statements are substantially correct?"

to which ruling this defendant duly and legally excepted. (Tr. 1909)

72. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harding Bancroft:

> "Q. Then you would change it to that extent that you are now uncertain as to whether it is substantially correct. Is that your testimony?"

to which ruling this defendant duly and legally excepted. (Tr. 1910)

[fol. 2126]. 73. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harding Bancroft:

> "Q. The question was that there has been a change in that the position of the Times since April 15, 1960, namely, that at that time they said these other statements are 'substantially correct' and now you say on behalf of the Times that the Times is uncertain whether those statements are substantially correct."

to which ruling this defendant duly and legally excepted. (Tr. 1910)

74. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harding Bancroft:

> "Q. What does the New York Times say? They are one of the defendants in this case. Does the Times say it is substantially correct or not?"

to which ruling this defendant duly and legally excepted. (Tr. 1911-12)

75. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harding Bancroft:

> "Q. The question is whether the New York Times says that these matters with the exception of the padlocking statement—does the Times say that they are true or does the Times say that they are false?"

to which ruling this defendant duly and legally excepted. (Tr. 1912)

76. For that the trial court erred in its oral charge to the jury wherein the Court instructed the jury as follows:

> "Now the Court is of the opinion and so charges you, gentlemen of the jury, that the matter complained of in plaintiff's Exhibit No. 347, that's the controversial ad which you will have before you, and parts of which are set out in the Counts here in the Complaint, belongs to that class of defamation called in law, libel per se."

to which portion of such oral charge of the Court this defendant duly and legally excepted. (Tr. 1951 and 1956)

77. For that the trial court erred in its oral charge to the jury wherein the Court instructed the jury as follows:

> "We can say as part of the law in this case that a publication is libelous per se when they are such as to degrade the plaintiff in the estimation of his friends and the people of the place where he lives, as injure him in his public office, or impute misconduct to him in his office, or want of official integrity, or want of fidelity to a public trust, or such as will subject the plaintiff to ridicule or public distrust."

[fol. 2127] to which portion of such oral charge of the Court this defendant duly and legally excepted. (Tr. 1952 and 1956)

78. For that the trial court erred in its oral charge to the jury wherein the Court instructed the jury as follows:

> "So, as I said, if you are reasonably satisfied from the evidence before you, considered in connection with the rules of law the Court has stated to you, you would come to consider the question of damages, and, where as here, the Court has ruled the matter complained of proved to your reasonable satisfaction and aimed at the plaintiff in this case, is libelous per se, then punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown."

to which portion of such oral charge of the Court this defendant duly and legally excepted. (Tr. 1953 and 1957)

79. For that the trial court erred in its order, judgment, or decree overruling this defendant's motion for a new trial. (Tr. 2057 D)

80. For that the trial court erred in denying this defendant's motion for a new trial. (Tr. 2057 D)

81. For that the trial court erred in entering its order, judgment or decree denying this defendant's motion for a new trial. (Tr. 2057D)

82. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.1. I charge you, gentlemen of the jury, that the advertisement complained of in plaintiff's complaint is not libelous per se, that is to say, the same is not libelous as a matter of law." Refused, Jones Judge (Tr. 1957K)

83. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.2. I charge you, gentlemen of the jury, that the advertisement complained of in plaintiff's complaint is not libelous as a matter of law, and if, after reading that advertisement, you find that it was not degrading and would not tend to injure the plaintiff's reputation, then I further charge you that such advertisement is not in fact libelous and in that event your verdict must be for the defendant, The New York Times Company, a corporation." Refused, Jones Judge. (Tr. 1957 K)

84. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

[fol. 2128] "T.3. I charge you, gentlemen of the jury, that if you are reasonably satisfied from the evidence that the publication complained of by plaintiff in his complaint is false, then I further charge you that not every false publication is libelous as a matter of law, and that to make such publication libelous you must further find from the evidence that by reading such publication and giving to the words contained therein their natural and ordinary meaning, that the same is degrading, and would tend to injury the plaintiff's reputation by imputing to him some incapacity or lack of due qualification to fill the public office held by

plaintiff or by imputing to him some positive past misconduct which injuriously affects him in his public office or the holding of principles which are hostile to the maintenance of government." Refused, Jones Judge. (Tr. 1957 K)

85. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.4. I charge you, gentlemen of the jury, that if you are reasonably satisfied from the evidence that the publication complained of by plaintiff in his complaint is false, then I further charge you that not every false publication is libelous as a matter of law, and that to make such publication libelous you must further find from the evidence that by reading such publication and giving to the words contained therein their natural and ordinary meaning that the same is degrading and would tend to injure the plaintiff's reputation by imputing gross negligence, dishonesty or other impropriety in the discharge of his official duties." Refused, Jones Judge. (Tr. 1957 K)

86. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.5. I charge you, gentlemen of the jury, that in determining whether the advertisement complained of in plaintiff's complaint was libelous per se or libelous as a matter of law, you must find from the evidence that damage to plaintiff's reputation would follow as a natural and probable result of the publication of said advertisement, and in this connection it must be kept in mind that the damage claimed and with which you, the jury, are primarily concerned is injury to the reputation; and I further charge you that in the absence of such injury, even if you find from the evidence that the advertisement caused plaintiff notoriety and

embarrassment, your verdict must be for the defendant, The New York Times Company, a corporation." Refused, Jones, Judge. (Tr. 1057 L)

87. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.8. I charge you, gentlemen of the jury, that there is no evidence in this case that plaintiff has sustained any substantial damage, and I further charge you that in the event you find the issues in favor of the plaintiff. [fol. 2129] your verdict should be for nominal damages only." Refused, Jones Judge. (Tr. 1957 L)

88. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.9. I charge you, gentlemen of the jury, that if, in your consideration of this case under the evidence, you arrive at a consideration of whether or not the plaintiff is entitled to compensatory damages, then I further charge you that under the law your award for such compensatory damages should be such damages as you find from the evidence were directly and proximately caused to the plaintiff by the publication of the advertisement sued upon insofar as such advertisement related to the plaintiff." Refused, Jones Judge (Tr. 1957 L)

89. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.10. I charge you, gentlemen of the jury, if you find from the evidence that the advertisement complained of in plaintiff's complaint concerned the plaintiff, and if you further find from the evidence that such advertisement injured the plaintiff's feelings, but did

not and could not injure his reputation, then I charge you that your verdict must be for the defendant, The New York Times Company, a corporation." Refused, Jones Judge. (Tr. 1957 L)

90. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.11. I charge you, gentlemen of the jury, that before you are authorized to award substantial compensatory damages to the plaintiff, you must find from the evidence in this case that the plaintiff suffered substantial injury as a result of the publication by the defendant, The New York Times Company, a corporation, of the advertisement complained of by plaintiff in his complaint." Refused, Jones Judge. (Tr. 1957 L–1957 M)

91. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.15. I charge you, gentlemen of the jury, if you find from all the evidence that the advertisement complained of by the plaintiff was libelous per se but that plaintiff has sustained no actual injury, then I charge you that your verdict may be for nominal damages." Refused, Jones Judge (Tr. 1957 M)

92. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at [fol. 2130] the request of this defendant, The New York Times Company, a corporation:

"T.16. I charge you, gentlemen of the jury, if you should find from all the evidence that the advertisement complained of by plaintiff was libelous per se but that plaintiff has sustained no actual injury in his office, profession, trade or business by reason of the publication of the advertisement complained of in plaintiff's complaint, then I further charge you that your verdict

may be for nominal damages." Refused, Jones Judge. (Tr. 1957 M)

93. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.18. I charge you, gentlemen of the jury, that punitive damages, as the name indicates, are designed to punish the defendant, the New York Times Company, a corporation, and the other defendants in this case, for the publication of the advertisement complained of, and I further charge you that punitive damages may be awarded only in the event that you, the jury, are convinced by a fair preponderance of the evidence that the defendant, the New York Times Company, a corporation, in publishing the matter complained of was motivated by personal ill will, that is actual intent to do the plaintiff harm, or that the defendant, The New York Times Company, a corporation, was guilty of gross negligence and recklessness and not of just ordinary negligence or carelessness in publishing the matter complained of so as to indicate a wanton disregard of plaintiff's rights." Refused, Jones Judge (Tr. 1957 M)

94. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T. 22. I charge you, gentlemen of the jury, that if you believe the evidence in this case, you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation." Refused, Jones Judge. (Tr. 1957 M)

95. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T. 23. I charge you, gentlemen of the jury, that if you believe the evidence in this case you cannot find

a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation, in this case under Count One of plaintiff's complaint." Refused, Jones Judge. (Tr. 1957 M–1957 N)

96. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

[fol. 2131] "T.24. I charge you, gentlemen of the jury, that if you believe the evidence in this case you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation, in this case under Count One of plaintiff's complaint as last amended." Refused, Jones Judge. (Tr. 1957 N)

97. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.25. I charge you, gentlemen of the jury, that if you believe the evidence in this case you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation, in this case under Count Two of plaintiff's complaint." Refused, Jones Judge (Tr. 1957 N)

98. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T. 26. I charge you, gentlemen of the jury, that if you believe the evidence in this case your verdict must be for the defendant, The New York Times Company, a corporation." Refused, Jones Judge. (Tr. 1957 N)

99. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T. 27. I charge you, gentlemen of the jury, if you believe the evidence in this case your verdict must be for the defendant, The New York Times Company, a corporation, under Count One of the complaint." Refused, Jones Judge. (Tr. 1957 N)

100. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T. 28. I charge you, gentlemen of the jury, if you believe the evidence in this case your verdict must be for the defendant, The New York Times Company, a corporation, under Count Two of the complaint." Refused, Jones Judge. (Tr. 1957 N)

101. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T. 35. I charge you, gentlemen of the jury, that there is no evidence in this case from which it appears that the plaintiff was referred to in the advertisement published by defendant New York Times Company and therefore your verdict must be for the defendant New York Times Company." Refused, Jones Judge. (Tr. 1957 N)

[fol. 2132] 102. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.36. I charge you, gentlemen of the jury, that the words complained of by the plaintiff in his complaint in the advertisement published by the defendant New York Times Company in its newspaper must be considered in connection with the facts and circumstances in reference to which the words were used; and I further charge you that these facts and circumstances may take from the words any import of reflection on the ability and integrity of the plaintiff in his office,

trade, business, or profession, in which case the words used in the advertisement complained of would not be libelous." Refused, Jones Judge. (Tr. 1957 N–1957 O)

103. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T. 46. I charge you, gentlemen of the jury, that if you believe the evidence you cannot return a verdict in favor of the plaintiff and against the defendant, the New York Times Company, a corporation, for compensatory damages." Refused, Jones Judge. (Tr. 1957 O)

104. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T. 47. I charge you, gentlemen of the jury, that there has been no evidence introduced of any actual damage to the plaintiff." Refused, Jones Judge. (Tr. 1957 O)

105. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.48. I charge you, gentlemen of the jury, that there has been no evidence introduced upon which a verdict for compensatory damages could be based." Refused, Jones Judge. (Tr. 1957 O)

106. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.59. I charge you, gentlemen of the jury, that if you return a verdict for the plaintiff and assess damages against one or more of the defendants, you

must specify in your verdict what part of the damag are compensatory and what part of the damages a punitive as to each defendant against whom a verdict is returned." Refused, Jones Judge. (Tr. 1957 O)

107. For that the trial court erred in refusing to give the [fol. 2133] following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T.60. I charge you, gentlemen of the jury, that if you believe from all the evidence in this case that the plaintiff is entitled to recover damages against one or more of the defendants in this case you may in your discretion, put your verdict as to such damages, if any, in the form of special findings; that is to say you may assess any punitive or compensatory damages separately, indicating in what amount each kind of damage is found and as to which defendant, if any, it is so found." Refused, Judge Jones. (Tr. 1957 O)

108. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant, The New York Times Company, a corporation:

"T. 63. I charge you, gentlemen of the jury, that if you find from all the evidence that the plaintiff is entitled to punitive damages from one or more of the defendants but not from one or more of the other defendants you must return a verdict in favor of all the defendants." Refused, Jones Judge. (Tr. 1957 O)

109. For that the trial court erred in entering its judgment in behalf of plaintiff in this cause. (Tr. 1958)

110. For that the trial court erred in entering its final judgment of November 3, 1960, in favor of plaintiff and against this defendant in this cause. (Tr. 1958)

111. For that the trial court erred in entering its judgment of November 3, 1960, based upon the verdict of the jury in this cause, in favor of plaintiff and against this defendant. (Tr. 1958)

112. For that the trial court erred in entering its final judgment against this defendant in this cause. (Tr. 1958)

113. For that the trial court erred in entering its final judgment of November 3, 1960, in favor of plaintiff and against this defendant in this cause. (Tr. 1958)

114. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 79, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 197)

115. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 80, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 197)

[fol. 2134] 116. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 81, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 197)

117. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 82, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 197)

118. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 83, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 197)

119. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 84, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 197)

120. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-

duction in evidence of, plaintiff's Exhibit No. 85, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 198)

121. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 86, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 198)

122. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 87, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 198)

123. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 88, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 198)

124. For that the trial court erred in overruling this defendant's objections to and thereby allowing the intro- [fol. 2135] duction in evidence of, plaintiff's Exhibit No. 89, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 198)

125. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 90, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 198)

126. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 91, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 201)

127. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 92, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 204)

128. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 93, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 205)

129. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 94, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 206)

130. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 136, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 248)

131. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 138, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 250)

132. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 174, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 264)

[fol. 2136] 133. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 175, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 265)

134. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 176, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 269)

135. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-

duction in evidence of, plaintiff's Exhibit No. 185, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

136. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 186, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

137. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 187, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

138. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 188, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

139. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 189, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

140. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 190, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

141. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 191, to which [fol. 2137] ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

142. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 192, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

143. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 193, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

144. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 194, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

145. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 195, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

146. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 196, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

147. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 197, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

148. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 198, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

149. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 199, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

150. For that the trial court erred in overruling this [fol. 2138] defendant's objections to, and thereby allowing

the introduction in evidence of, plaintiff's Exhibit No. 200, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

151. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 201, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

152. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 201, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

153. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 202, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

154. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 203, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

155. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 204, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

156. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 205, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

157. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 206, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

158. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 207, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

[fol. 2139]. 159. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 208, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

160. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 209, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

161. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 210, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

162. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 211, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

163. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 212, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

164. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 213, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

165. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-

duction in evidence of, plaintiff's Exhibit No. 214, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

166. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 215, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

167. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 216, to which [fol. 2140] ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

168. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 217, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

169. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 218, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

170. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 219, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

171. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit 220, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

172. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 221, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

173. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 222, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

174. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 223, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

175. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 224, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

176. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-
[fol. 2141] duction in evidence of plaintiff's Exhibit No. 225, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

177. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 226, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

178. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 227, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

179. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 228, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

180. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-

duction in evidence of, plaintiff's Exhibit No. 229, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

181. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 230, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

182. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 231, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

183. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 232, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 281)

184. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 237, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 289)

[fol. 2142] 185. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 239, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 291)

186. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 240, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

187. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 241, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

188. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 242, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

189. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 243, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

190. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 244, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

191. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 245, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

192. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 246, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

193. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-
[fol. 2143] duction in evidence of, plaintiff's Exhibit No. 247, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

194. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 248, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

195. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-

duction in evidence of, plaintiff's Exhibit No. 249, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

196. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 250, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

197. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 251, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

198. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 252, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

199. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 253, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

200. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 254, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

201. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 255, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

[fol. 2144] 202. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 256, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

203. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 257, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

204. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 258, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

205. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 259, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

206. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 260, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

207. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 261, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

208. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 262, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

209. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 263, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

210. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-

duction in evidence of, plaintiff's Exhibit No. 264, to which [fol. 2145] ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

211. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 265, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 372)

212. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 310, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 487)

213. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 316, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

214. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 317, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

215. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 318, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

216. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 319, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

217. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 320, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

218. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 321, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

219. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-
[fol. 2146] duction in evidence of, plaintiff's Exhibit No. 322, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

220. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 323, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

221. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 324, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

222. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 325, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

223. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 326, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

224. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 327, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

225. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-

duction in evidence of, plaintiff's Exhibit No. 328, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

226. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 329, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

227. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 330, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

[fol. 2147] 228. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 331, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

229. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 332, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

230. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 333, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

231. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 334, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

232. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 335, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

233. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 336, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553).

234. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 337, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

235. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 338, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

236. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 339, to which [fol. 2148] ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

237. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 340, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

238. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 341, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

239. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 342, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

240. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the intro-

duction in evidence of, plaintiff's Exhibit No. 343, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

241. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 344, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

242. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 345, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

243. For that the trial court erred in overruling this defendant's objections to, and thereby allowing the introduction in evidence of, plaintiff's Exhibit No. 346, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 553)

244. For that the trial court erred in entering its order, judgment or decree of the 9th day of June, 1960, granting plaintiff's motion to produce. (Tr. 29)

245. For that the trial court erred in overruling this defendant's objections to being required to answer plaintiff's interrogatory No. 8 propounded to this defendant. (Tr. 20, 51, 53)

[fol. 2149] 246. For that the trial court erred in overruling this defendant's objections to being required to answer plaintiff's interrogatory No. 9 propounded to this defendant. (Tr. 21, 51, 53)

247. For that the trial court erred in overruling this defendant's objections to being required to answer plaintiff's interrogatory No. 12 propounded to this defendant (Tr. 21, 53, 52)

248. For that the trial court erred in overruling this defendant's objections to being required to answer plaintiff's interrogatory No. 18 propounded to this defendant. (Tr. 22, 23, 52, 53)

249. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

"Q. Is it important to the business of The New York Times to have those stringers in Alabama?"

to which ruling this defendant duly and legally excepted. (Tr. 122)

250. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

"Q. Haven't you made an active effort to obtain stringers in Montgomery when there were no stringers or it would appear there would be no stringers in the immediate future, Mr. Faber?"

to which ruling this defendant duly and legally excepted. (Tr. 123)

251. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

"Q. Now, am I correct, sir, that The Times as a matter of business policy wants to have three stringers in Alabama at all times?"

to which ruling this defendant duly and legally excepted. (Tr. 123)

252. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

"Q. Well, restricting it to Alabama for the moment, on occasions when you were aware that a string correspondent was about to discontinue his duties with The New York Times, have you not made an active effort to find a replacement for him?"

to which ruling this defendant duly and legally excepted. (Tr. 124-125)

[fol. 2150] 253. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

> "Q. All right. Now, I will ask you again, during that period of time, what is the purpose insofar as The New York Times is concerned of having those string correspondents in Alabama?"

to which ruling this defendant duly and legally excepted. (Tr. 126)

254. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

> "Q. Do they sometimes decide themselves, that is, they, the staff correspondents, that there is a news situation worthy of coverage in Alabama and they go in on their own?"

to which ruling this defendant duly and legally excepted. (Tr. 134)

255. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

> "Q. What was the purpose of submitting to him that list of cities?"

to which ruling this defendant duly and legally excepted. (Tr. 137)

256. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

> "Q. Mr. Faber, have you now during the course of your cross examination and direct examination detailed all of the services performed by Alabama stringers for The New York Times?"

to which ruling this defendant duly and legally excepted. (Tr. 176)

257. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

> "Q. Now, Mr. Faber, you mentioned collect calls from the stringers to The New York Times in your direct testimony. Now, suppose a stringer calls in a story to The New York Times or wires it in, and in either event, sends it in collect, and suppose also that The New York Times does not accept that story for publication, does The New York Times honor the collect charge?"

to which ruling this defendant duly and legally excepted. (Tr. 190)

[fol. 2151] 258. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

> "Q. Do you presently and have you had for the last four years a recording machine in New York which is used to record, among other thing, stories that are sent in by staff correspondents and stringers who are located outside of New York?"

to which ruling this defendant duly and legally excepted. (Tr. 191)

259. For that the trial court erred in overruling this defendant's objection to the following question propounded by the plaintiff to the witness, Harold Faber:

> "Q. Do Alabama stringers and do staff correspondents who come into Alabama phone in stories for recordation on any machine in the offices of The New York Times in New York?"

to which ruling this defendant duly and legally excepted. (Tr. 191)

260. For that the trial court erred in sustaining plaintiff's objections to this defendant's Exhibits 1 through 160 offered in support of this defendant's motion for new trial,

to which ruling this defendant duly and legally excepted. (Tr. 1966-1988)

261. For that the trial court erred in sustaining plaintiff's objections to this defendant's evidence offered in support of its motion for new trial, to which ruling this defendant duly and legally excepted. (Tr. 1960A)

262. For that the trial court erred in denying to this defendant the right to adduce evidence in support of grounds 182 and 183 of its motion for a new trial in this cause, to which ruling this defendant duly and legally excepted. (Tr. 1963, 1964, 1966)

263. For that the trial court erred in sustaining objections of the plaintiff to the introduction into evidence of defendant's Exhibits 1 through 160 to this defendant's motion for new trial, to which ruling this defendant duly and legally excepted. (Tr. 1966)

264. For that the trial court erred in sustaining plaintiff's objections to the following questions propounded by this defendant to the witness, John McCabe:

> "Q. And if an expense statement shows an overnight stop in a certain town, it would not necessarily mean that that person conducted any activity in the way of news gathering if he were a reporter for The New [fol. 2152] York Times in that place, would it?"

to which ruling this defendant duly and legally excepted. (Tr. 449)

265. For that the trial court erred in sustaining plaintiff's objections to the following questions propounded by this defendant to the witness, John McCabe:

> "Q. Would that expense account tell you whether or not he was gathering news in that place or is there an absence of a showing on there as to what he was doing?"

to which ruling this defendant duly and legally excepted. (Tr. 453, 454)

266. For that the trial court erred in sustaining plaintiff's objections to the following question propounded by this defendant to the witness, John McCabe:

"Q. From your experience and your connection with and your familiarity with expense statements of The New York Times and looking at this whole document taken together with that item you have just read, would that indicate to you that John Popham was conducting any news gathering activities in Huntsville, Alabama?"

to which ruling this defendant duly and legally excepted. (Tr. 456, 457)

267. For that the trial court erred in sustaining plaintiff's objections to the following question propounded by this defendant to the witness, John McCabe:

"Q. From your experience and your connection with and your familiarity with expense statements of The New York Times and looking at this whole document taken together with that item you have just read, would that indicate to you that John Popham was conducting any news gathering activities in Huntsville, Alabama, relating to plaintiff's Exhibits Nos. 93, 98, 99, 100 and 101?"

to which ruling this defendant duly and legally excepted. (Tr. 457)

268. For that the trial court erred in sustaining plaintiff's objections to this defendant's Exhibit No. 156 offered in support of this defendant's motion for new trial, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 1966, 1997)

269. For that the trial court erred in sustaining plaintiff's objections to this defendant's Exhibit No. 157 offered in support of this defendant's motion for new trial, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 1966, 1998)

270. For that the trial court erred in sustaining plaintiff's objections to this defendant's Exhibit No. 158 offered

[fol. 2153] in support of this defendant's motion for new trial, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 1966, 1998)

271. For that the trial court erred in sustaining plaintiff's objections to this defendant's Exhibit No. 159 offered in support of this defendant's motion for new trial, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 1966, 1998)

272. For that the trial court erred in sustaining plaintiff's objections to this defendant's Exhibit No. 160 offered in support of this defendant's motion for new trial, to which ruling of the trial court this defendant duly and legally excepted. (Tr. 1966, 1998)

273. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying the motion of this defendant as amended to quash service of process upon it in this case, and in so doing deprived this defendant of its property without due process of law contrary to the provisions of Amendment Fourteen to the Constitution of the United States. (Tr. 40)

274. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon Don McKee as an alleged agent of this defendant, and in so doing deprived this defendant of its property without due process of law contrary to the provisions of Amendment Fourteen to the Constitution of the United States. (Tr. 40)

275. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying the Motion as amended of this defendant to quash service of process upon it in holding in said order, judgment or decree that this defendant had made a general appearance in this cause, and in so doing deprived this defendant of its property without due process of law contrary to the provisions of Amendment Fourteen to the Constitution of the United States. (Tr. 40)

276. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defen-

dant's Motion as amended to quash service of process upon it had under the provisions of Title 7, Section 199(1) Code of Alabama, of 1940, and holding therein that service of process on this defendant was valid under the provisions of said Title 7, Section 199(1) Code of Alabama, 1940, and in [fol. 2154] so doing deprived this defendant of its property without due process of law contrary to the provisions of Amendment Fourteen to the Constitution of the United States. (Tr. 40)

277. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon it in holding in said order, judgment or decree that this defendant was "doing business" in the State of Alabama, and in so doing deprived this defendant of its property without due process of law contrary to the provisions of Amendment Fourteen to the Constitution of the United States. (Tr. 40)

278. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying the Motion of this defendant as amended, to quash service of process upon it in this case, and in so doing denied this defendant the equal protection of the law as guaranteed to it by Amendment Fourteen to the Constitution of the United States. (Tr. 40)

279. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon Don McKee as an alleged agent of this defendant, and in so doing denied this defendant the equal protection of the law as guaranteed to it by Amendment Fourteen to the Constitution of the United States. (Tr. 40)

280. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying the Motion as amended of this defendant to quash service of process upon it in holding in said order, judgment or decree that this defendant had made a general appearance in this cause, and in so doing denied this defendant the equal protection

of the law as guaranteed to it by Amendment Fourteen to the Constitution of the United States. (Tr. 40)

281. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon it had under the provisions of Title 7, Section 199(1), Code of Alabama of 1940, and holding therein that service of process on this defendant was valid under the provisions of said Title 7, Section 199(1) Code of Alabama, 1940, and [fol. 2155] in so doing denied this defendant the equal protection of the law as guaranteed to it by Amendment Fourteen to the Constitution of the United States. (Tr. 40)

282. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon it in holding in said order, judgment or decree that this defendant was "doing business" in the State of Alabama, and in so doing denied this defendant the equal protection of the law as guaranteed to it by Amendment Fourteen to the Constitution of the United States. (Tr. 40)

283. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying the Motion of this defendant, as amended, to quash service of process upon it in this case, and in so doing placed an improper restraint on freedom of the press in violation of the First and Fourteenth Amendments to the Constitution of the United States. (Tr. 40)

284. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon Don McKee as an alleged agent of this defendant, and in so doing placed an improper restraint on freedom of the press in violation of the First and Fourteenth Amendments to the Constitution of the United States. (Tr. 40)

285. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying the Motion as amended of this defendant to quash service of process upon it in holding in said order, judgment or decree that

this defendant had made a general appearance in this cause, and in so doing placed an improper restraint on freedom of the press in violation of the First and Fourteenth Amendments to the Constitution of the United States. (Tr. 40)

286. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon it had under the provisions of Title 7, Section 199(1), Code of Alabama of 1940, and holding therein that service of process on this defendant was valid under the provisions of said Title 7, Section 199(1) Code of Alabama, 1940, and [fol. 2156] in so doing placed an improper restraint on freedom of the press in violation of the First and Fourteenth Amendments to the Constitution of the United States. (Tr. 40)

287. For that the trial court erred in entering its order, judgment or decree of August 5, 1960, denying this defendant's Motion as amended to quash service of process upon it in holding in said order, judgment or decree that this defendant was "doing business" in the State of Alabama, and in so doing placed an improper restraint on freedom of the press in violation of the First and Fourteenth Amendments to the Constitution of the United States. (Tr. 40)

288. For that the trial court erred in overruling this defendant's demurrers as last amended to plaintiff's complaint and in thereby holding that said complaint stated a cause of action deprived this defendant of its property without due process of law in contravention of the provisions of Amendment Fourteen to the Constitution of the United States. (Tr. 86)

289. For that the trial court erred in overruling this defendant's demurrers as last amended to plaintiff's complaint and in thereby holding that said complaint stated a cause of action abridged freedom of the press in contravention of the provisions of the First and Fourteenth Amendments to the Constitution of the United States. (Tr. 86)

290. For that the trial court erred in overruling this defendant's demurrers as last amended to Count One of

plaintiff's complaint and in thereby holding that said Count One stated a cause of action abridged freedom of the press in contravention of the provisions of the First and Fourteenth Amendments to the Constitution of the United States. (Tr. 86)

291. For that the trial court erred in overruling this defendant's demurrers as last amended to Count Two of plaintiff's complaint and in thereby holding that said Count Two stated a cause of action abridged freedom of the press in contravention of the provisions of the First and Fourteenth Amendments to the Constitution of the United States. (Tr. 86)

292. For that the trial court erred in overruling this defendant's demurrers as last amended to Count One of [fol. 2157] plaintiff's complaint and in thereby holding that said Count One stated a cause of action deprived this defendant of its property without due process of law in contravention of the provisions of Amendment Fourteen to the Constitution of the United States. (Tr. 86)

293. For that the trial court erred in overruling this defendant's demurrers as last amended to Count Two of plaintiff's complaint and in thereby holding that said Count Two stated a cause of action deprived this defendant of its property without due process of law in contravention of the provisions of Amendment Fourteen to the Constitution of the United States. (Tr. 86)

294. For that the trial court erred in its oral charge to the jury wherein the Court instructed the jury as follows:

> "So, as I said, if you are reasonably satisfied from the evidence before you, considered in connection with the rules of law the Court has stated to you, you would come to consider the question of damages, and, where as here, the Court has ruled the matter complained of proved to your reasonable satisfaction and aimed at the plaintiff in this case, is libelous per se, then punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown."

and in so instructing the jury the trial court deprived this defendant of its property without due process of law in contravention of the provisions of Amendment Fourteen to the Constitution of the United States, to which portion of such oral charge of the Court this defendant duly and legally excepted. (Tr. 1953, 1957)

295. For that the trial court erred in its oral charge to the jury wherein the Court instructed the jury as follows:

> "So, as I said, if you are reasonably satisfied from the evidence before you, considered in connection with the rules of law the Court has stated to you, you would come to consider the question of damages, and, where as here, the Court has ruled the matter complained of proved to your reasonable satisfaction and aimed at the plaintiff in this case, is libelous per se, then punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown."

and in so instructing the jury the trial court denied to this defendant the equal protection of the law as guaranteed to it by the provisions of Amendment Fourteen to the Constitution of the United States, to which portion of such oral charge of the Court this defendant duly and legally excepted. (Tr. 1953, 1957)

[fol. 2158] 296. For that the trial court erred in its oral charge to the jury wherein the Court instructed the jury as follows:

> "So, as I said, if you are reasonably satisfied from the evidence before you, considered in connection with the rules of law the Court has stated to you, you would come to consider the question of damages, and, where as here, the Court has ruled the matter complained of proved to your reasonable satisfaction and aimed at the plaintiff in this case, is libelous per se, then punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown."

and in so instructing the jury the trial court imposed an improper restraint or abridged freedom of the press contrary to the provisions of Amendments One and Fourteen to the Constitution of the United States, to which portion of such oral charge of the Court this defendant duly and legally excepted. (Tr. 1953, 1957)

297. For that the trial court erred in denying this defendant's motion for new trial on those grounds of said motion numbered 150 and 151 stating that said verdict was so excessive that the same was the result of bias, passion or prejudice against this defendant and in so denying said motion the trial court deprived this defendant of its property without due process of law in contravention of the provisions of Amendment Fourteen to the Constitution of the United States. (Tr. 2057D)

298. For that the trial court erred in denying this defendant's motion for new trial on those grounds of said motion numbered 150 and 151 stating that said verdict was so excessive that the same was the result of bias, passion or prejudice against this defendant and in so denying said motion the trial court abridged or placed an improper restraint on freedom of the press contrary to the provisions of Amendments One and Fourteen to the Constitution of the United States. (Tr. 2057 D)

299. For that the trial court erred in denying this defendant's motion for new trial on those grounds of said motion numbered 150 and 151 stating that said verdict was so excessive that the same was the result of bias, passion or prejudice against this defendant and in so denying said motion the trial court denied this defendant equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States. (Tr. 2057 D)

[fol. 2159] 300. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"T. 22. I charge you, gentlemen of the jury, that if you believe the evidence in this case, you cannot find

a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation." Refused, Jones Judge

and in so refusing deprived this defendant of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States. (Tr. 1957 M)

301. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"T. 23. I charge you, gentlemen of the jury, that if you believe the evidence in this case you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation, in this case under Count One of plaintiff's complaint." Refused, Jones Judge.

and in so refusing deprived this defendant of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States. (Tr. 1957 N)

302. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"T. 25. I charge you, gentlemen of the jury, that if you believe the evidence in this case you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation, in this case under Count Two of plaintiff's complaint." Refused, Jones Judge.

and in so refusing deprived this defendant of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States. (Tr. 1957 N)

303. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"T. 22. I charge you, gentlemen of the jury, that if you believe the evidence in this case, you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation." Refused, Jones Judge.

and in so refusing denied this defendant the equal pro- [fol. 2160] tection of the law as guaranteed to it by the Fourteenth Amendment to the Constitution of the United States. (Tr. 1957M)

304. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"T. 23. I charge you, gentlemen of the jury, that if you believe the evidence in this case you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation, in this case under Count One of plaintiff's complaint." Refused, Jones Judge.

and in so refusing denied this defendant the equal protection of the law as guaranteed to it by the Fourteenth Amendment to the Constitution of the United States. (Tr. 1957N)

305. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"T. 25. I charge you, gentlemen of the jury, that if you believe the evidence in this case you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation in this case under Count Two of plaintiff's complaint.". Refused, Jones Judge.

and in so refusing denied this defendant the equal protection of the law as guaranteed to it by the Fourteenth Amendment to the Constitution of the United States. (Tr. 1957 N)

306. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"T. 22. I charge you, gentlemen of the jury, that if you believe the evidence in this case, you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation." Refused, Jones Judge.

and in so refusing abridged or imposed an improper restraint of the freedom of the press in contravention of Amendments One and Fourteen to the Constitution of the United States. (Tr. 1957 M)

307. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"T. 23. I charge you, gentlemen of the jury, that if you believe the evidence in this case you cannot find a verdict in favor of the plaintiff and against the de- [fol. 2161] fendant, The New York Times Company, a corporation, in this case under Count One of plaintiff's complaint." Refused, Jones Judge.

and in so refusing abridged or imposed an improper restraint of the freedom of the press in contravention of Amendments One and Fourteen to the Constitution of the United States. (Tr. 1957 M)

308. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"T. 25. I charge you, gentlemen of the jury, that if you believe the evidence in this case you cannot find a verdict in favor of the plaintiff and against the defendant, The New York Times Company, a corporation in this case under Count Two of plaintiff's complaint." Refused, Jones Judge.

and in so refusing abridged or imposed an improper restraint of the freedom of the press in contravention of Amendments One and Fourteen to the Constitution of the United States. (Tr. 1957 N)

309. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"T. 35. I charge you, gentlemen of the jury, that there is no evidence in this case from which it appears that the plaintiff was referred to in the advertisement published by defendant New York Times Company and therefore your verdict must be for the defendant New York Times Company." Refused, Jones Judge.

and in so refusing denied this defendant the equal protection of the law as guaranteed to it by the Fourteenth Amendment to the Constitution of the United States. (Tr. 1957 N)

310. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"T. 35. I charge you, gentlemen of the jury, that there is no evidence in this case from which it appears that the plaintiff was referred to in the advertisement published by defendant New York Times Company and therefore your verdict must be for the defendant New York Times Company." Refused, Jones Judge

and in so refusing abridged or imposed an improper restraint of the freedom of the press in contravention of Amendments One and Fourteen to the Constitution of the United States. (Tr. 1957 N)

[fol. 2162] 311. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of this defendant:

"T. 35. I charge you, gentlemen of the jury, that there is no evidence in this case from which it appears that the plaintiff was referred to in the advertisement published by defendant New York Times Company and therefore your verdict must be for the defendant New York Times Company." Refused, Jones Judge.

and in so refusing deprived this defendant of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States. (Tr. 1957 N)

312. For that the trial court erred in overruling this defendant's demurrers as last amended to plaintiff's complaint and in thereby holding that said complaint stated a cause of action denied to this defendant equal protection of the laws in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States. (Tr. 86).

313. For that the trial court erred in overruling this defendant's demurrers as last amended to Count One of plaintiff's complaint and in thereby holding that said Count One stated a cause of action denied to this defendant equal protection of the laws in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States. (Tr. 86)

314. For that the trial court erred in overruling this defendant's demurrers as last amended to Count Two of plaintiff's complaint and in thereby holding that said Count Two stated a cause of action denied to this defendant equal protection of the laws in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States. (Tr. 86)

Beddow, Embry & Beddow, T. Eric Embry, Attorneys for Appellant, The New York Times Company, a Corporation.

[fol. 2163] Certificate of Service (omitted in printing).

[fol. 2165]

IN THE SUPREME COURT OF ALABAMA

No. .....

THIRD DIVISION

THE NEW YORK TIMES COMPANY, A Corporation, RALPH D. ABERNATHY, FRED L. SHUTTLESWORTH, S. S. SEAY, SR., AND J. E. LOWERY, Appellants,

vs.

L. B. SULLIVAN, Appellee.

ASSIGNMENTS OF ERROR OF RALPH D. ABERNATHY, ET AL.

Come the Appellants, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery in this cause and say there is manifest error in the trial of this cause and manifest error in the record of the trial of this cause and as grounds for such error set down and assign the following, separately and severally:

1. For that the trial court erred in overruling these defendants' demurrers and amended demurrers to plaintiff's Complaint. (Tr. 86)

2. For that the trial court erred in its ruling refusing to allow these defendants to propound the following question to the jury venire on voir dire:

"1. I will ask you, gentlemen, even though at the close of this case that you may find a certain statement contained in the advertisement made the basis of the plaintiff's complaint in this case in their cause of action are not accurate or correct but the evidence discloses that the advertisement did not refer to the plaintiffs, do you entertain any conviction, opinion, or predisposition of mind which would compel you to return a verdict in favor of the plaintiffs, or would prevent your returning a verdict in favor of the defendant, the New York Times Company, a corporation?"

to which ruling these defendants duly and legally excepted. (Tr. 1694-95)

3. For that the trial court erred in its ruling refusing to allow these defendants to propound the following question to the jury venire on voir dire:

> "2. Have any of you gentlemen ever been a plaintiff in a lawsuit in this Court any number of times, that is to say, have you filed a suit seeking recovery of money from another person, firm, or corporation?"

to which ruling these defendants duly and legally excepted. (Tr. 1695)

4. For that the trial court erred in its ruling refusing to allow these defendants to propound the following question to the jury venire on voir dire:

> [fol. 2166] "3. I will ask you, gentlemen, if at the close of the evidence in this case and the evidence shows that The New York Times Company was not actuated by malice in publishing this paid advertisement, would you refuse to award damages to punish the New York Times, that is to say, would you refuse to award punitive damages?"

to which ruling these defendants duly and legally excepted. (Tr. 1695)

5. For that the trial court erred in its ruling refusing to allow these defendants to propound the following question to the jury venire on voir dire:

> "4. Is there any reason, without disclosing that reason to me, that would tend to embarrass you, or embarrass you in any way, or cause you to hesitate to return a verdict in favor of the New York Times Company, a corporation, in this case?"

to which ruling these defendants duly and legally excepted. (Tr. 1695)

6. For that the trial court erred in refusing to sustain these defendants' objection to the way that the word

N-E-G-R-O was being pronounced which sounded like N-I-G-R-A or Nigger. (Tr. 1695-98)

7. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Grover C. Hall, Jr.:

> "Q. I will ask you, Mr. Hall, whether you associate the statements contained in that paragraph with any person or persons?"

to which ruling these defendants duly and legally excepted. (Tr. 1723)

8. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Grover C. Hall, Jr.:

> "Q. Referring to the statements contained in the paragraph of the ad to which I referred you, do you associate those statements with any person or persons?"

to which ruling these defendants duly and legally excepted. (Tr. 1724)

9. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Arnold D. Blackwell:

> "Q. Do the statements contained in that paragraph associate themselves in your mind with any person or group of persons?"

to which ruling these defendants duly and legally excepted. (Tr. 1734-35)

10. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Arnold D. Blackwell:

> [fol. 2167] "Q. Now, if you believed the statements in that paragraph to be correct, Mr. Blackwell, and true, would they affect your opinion of the Police Commissioner in any way?"

to which ruling these defendants duly and legally excepted. (Tr. 1736)

11. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Arnold D. Blackwell:

> "Q. . . . I ask you there whether those statements associate themselves in your mind with any person or persons?"

to which ruling these defendants duly and legally excepted. (Tr. 1737)

12. For that the trial court erred in overruling these defendants' objection to the witness, William H. McDonald:

> "Q. Now, going back to March 6th of this year, 1960, Mr. MacDonald, did you have occasion to observe a demonstration or a near riot that took place on Dexter Avenue on Sunday, March 6th?"

to which ruling these defendants duly and legally excepted. (Tr. 1748-49)

13. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Harry W. Kaminsky:

> "Q. Now, Mr. Kaminsky, do you associate the statements and material contained in that paragraph that I have just showed you with any person or persons?"

to which ruling these defendants duly and legally excepted. (Tr. 1755)

14. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Harry W. Kaminsky:

> "Q. If you believed the statements contained in that paragraph to be correct, Mr. Kaminsky, would that affect in any way your opinion of the Police Commissioner?"

to which ruling these defendants duly and legally excepted. (Tr. 1755)

15. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, H. M. Price, Sr.:

"Q. Mr. Price, did it—when you read the statements contained in those two paragraphs, do they associate themselves in your mind with any person? Those statements of events?"

to which ruling these defendants duly and legally excepted. (Tr. 1765-66)

[fol. 2168] 16. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, H. M. Price:

"Q. Mr. Price, if you believed the statements contained in those two paragraphs to be true, regardless of whether you think them to be true, if you believed them to be true, would that affect your opinion of Mr. Sullivan—?"

to which ruling these defendants duly and legally excepted. (Tr. 1766)

17. For that the trial court erred in overruling these defendants' motion to strike the following answer of plaintiff's witness, H. M. Price, Sr.:

"A. I don't think there is any question about what I would decide. I think I would decide that we probably had a young Gestapo in Montgomery."

to which ruling these defendants duly and legally excepted. (Tr. 1766)

18. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, William M. Parker, Jr.:

"Q. Mr. Parker do you associate those statements contained in those paragraphs with any person or persons that you know or are acquainted with?"

to which ruling these defendants duly and legally excepted. (Tr. 1770-71)

19. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, William M. Parker, Jr.:

"Q. Mr. Parker, on the assumption that you believed those to be true, whether you do or not, but if you did believe them to be true, the statements I have read, would that affect your opinion of Mr. Sullivan, and if so, state how."

to which ruling these defendants duly and legally excepted. (Tr. 1771)

20. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Horace W. White:

"Q. Did it mean any particular person or persons to you?"

to which ruling these defendants duly and legally excepted. (Tr. 1785).

21. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Horace W. White:

"Q. I will ask you this, if you believe—not saying that you believe or do not believe—but if you believed the material in those paragraphs in this ad, would that affect your opinion of Mr. L. B. Sullivan?"

to which ruling these defendants duly and legally excepted. (Tr. 1785)

[fol. 2169] 22. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Horace W. White:

"Q. In what manner would it affect your opinion?"

to which ruling these defendants duly and legally excepted. (Tr. 1786)

23. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, John R. Matthews:

"Q. Now, where is the first entry in your books which indicated a charge in connection with the incident on March 8th?"

to which ruling these defendants duly and legally excepted. (Tr. 1797-98)

24. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, E. Y. Lacy:

> "Q. In the course of your duties, Lt. Lacy, did you have occasion to investigate a bombing which took place in the home of Martin Luther King, Jr., in Montgomery, Alabama?"

to which ruling these defendants duly and legally excepted. (Tr. 1807)

25. For that the trial court erred in its ruling refusing to allow these defendants to propound the following question on cross-examination to the witness, E. Y. Lacy:

> "Q. Then, obviously, this article or the matter that you talked about didn't apply to him, did it?"

26. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, O. M. Strickland:

> "Q. As connected with the arrest of Martin Luther King, Jr., and state what the circumstances were and what happened on that occasion in your own words."

to which ruling these defendants duly and legally excepted. (Tr. 1814-15)

27. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Frank R. Steward:

> "Q. Would you state the circumstances of the expulsion of nine students from Alabama State College by the State Board of Education?"

to which ruling these defendants duly and legally excepted. (Tr. 1819)

[fol. 2170] 28. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, Frank R. Steward:

"Q. Now, Doctor, I want to read one sentence to you and ask you whether it is true. 'In Montgomery, Alabama, after students sang "My Country 'Tis of Thee" on the State Capitol steps their leaders were expelled from school.'"

29. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness L. B. Sullivan:

"Q. I call your attention, Mr. Sullivan, to the third paragraph in the left hand column of this ad which reads as follows: 'In Montgomery, Alabama, after students sang "My Country 'Tis of Thee," on the State Capitol steps, their leaders were expelled from school and truckloads of police, armed with shotguns and tear gas, ringed the Alabama State College campus.' I ask you if that statement is true or false?"

to which ruling these defendants duly and legally excepted. (Tr. 1829)

30. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

"Q. Now Mr. Sullivan, I call your attention to the next sentence in that same paragraph which reads as follows: 'When the entire student body protested to State authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.' Is that statement true or false?"

to which ruling these defendants duly and legally excepted. (Tr. 1830)

31. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

"Q. Now, I ask you, Mr. Sullivan, whether, to your knowledge, it is accurate that they have arrested him seven times—for speeding, loitering and similar offenses?"

to which ruling these defendants duly and legally excepted. (Tr. 1832)

32. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

"Q. Mr. Sullivan, did you have anything at all to do with procuring the indictment of Martin Luther King on a charge of violating income tax laws of the State of Alabama?"

to which ruling these defendants duly and legally excepted. (Tr. 1833)

[fol. 2171] 33. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

"Q. Did you testify in that case either before the Grand Jury which indicted him, or before the petit jury which tried him?"

to which ruling these defendants duly and legally excepted. (Tr. 1833)

34. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, L. B. Sullivan:

"Q. Did you testify with regard to the guilt or innocence of the defendant?"

to which ruling these defendants duly and legally excepted. (Tr. 1834)

35. For that the trial court erred in overruling these defendants' motions to exclude plaintiff's evidence, to which ruling these defendants duly and legally excepted. (Tr. 1853)

36. For that the trial court erred in overruling these defendants' objection to the following question propounded by the plaintiff to the witness, John Murray:

"Q. Now, did you satisfy yourself that the facts that you were going to put into this ad were correct or that the

purported facts which were going into the ad were correct?"

to which these defendants duly and legally excepted. (Tr. 1941)

37. For that the trial court erred in denying these defendants' motion to exclude plaintiff's evidence as refiled, and to which ruling these defendants duly and legally excepted. (Tr. 1944)

38. For that the trial court erred in its oral charge to the jury wherein the Court instructed the jury as follows:

"Now the Court is of the opinion and so charges you, gentlemen of the jury, that the matter complained of in plaintiff's Exhibit No. 347, that's the controversial ad which you will have before you, and parts of which are set out in the Counts here in the Complaint, belongs to that class of defamation called in law, libel per se."

to which portion of such oral charge of the Court these defendants duly and legally excepted. (Tr. 1951 and 1957)

39. For that the trial court erred in its oral charge to the jury wherein the Court instructed the jury as follows:

"We can say as part of the law in this case that a publication is libelous per se when they are such as to degrade the plaintiff in the estimation of his friends and the people of the place where he lives, as injure him in his public office, or impute misconduct to him in his office, or want of official integrity, or want of fidelity to a public trust, or such as will subject the plaintiff to ridicule or public distrust."

[fol. 2172] to which portion of such oral charge of the Court these defendants duly and legally excepted. (Tr. 1952 and 1957)

40. For that the trial court erred in its oral charge to the jury wherein the Court instructed the jury as follows:

"So, as I said, if you are reasonably satisfied from the evidence before you, considered in connection with the rules of law the Court has stated to you, you would

come to consider the question of damages, and, where as here, the Court has ruled the matter complained of proved to your reasonable satisfaction and aimed at the plaintiff in this case, is libelous per se, then punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown."

to which portion of such oral charge of the Court these defendants duly and legally excepted. (Tr. 1953 and 1957)

41. For that the trial court erred in its oral charge to the jury wherein the Court instructed the jury as follows:

"Now, it is the contention of the plaintiff here that although you may believe, as to the four individual defendants, that they did not sign this advertisement and did not authorize it, yet it is the contention of the plaintiff, Sullivan, that the four individuals, the four individual defendants after knowing of the publication of the advertisement and after knowing of its contents, ratified the use of their names, that is, that they approved and sanctioned this advertisement. In other words, the plaintiff, Sullivan, insists that there was a ratification of the advertisement and the use of their names as signers of the advertisement by the four individual defendants and we here define ratification as the approval by a person of a prior act which did not bind him but which was professedly done on his account or in his behalf whereby the act, the use of his name, the publication, is given effect as if authorized by him in the very beginning. Ratification is really the same as a previous authorization and is a confirmation or approval of what has been done by another on his account."

to which portion of such oral charge of the Court these defendants duly and legally excepted. (Tr. 1953 and 1957)

42. For that the trial court erred in its refusal to these defendants the right to be heard on their motion for a new trial, and which refusal deprived these defendants of their property without due process of law in contravention of their rights pursuant to the Fourteenth Amendment to the Constitution of the United States. (Tr. 2058-2105)

43. For that the trial court erred in its refusal to enter an order or ruling as a matter of record with respect to these defendants' motion for a new trial after repeated request of their attorneys of record in contravention of the due process clause of the Fourteenth Amendment to the Constitution of the United States of America.

44. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the [fol. 2173] request of the defendant, Ralph D. Abernathy:

"T.1. I charge you gentlemen of the jury, to find a verdict in favor of the defendant, Ralph D. Abernathy." Refused, Jones, Judge.

45. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.2. I charge you, gentlemen of the jury, that if you find that the Defendant, Ralph D. Abernathy, did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

46. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.3. I charge you, gentlemen of the jury, that if you find that the Defendant, Ralph D. Abernathy, did not consent to the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

47. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.4. I charge you, gentlemen of the jury, that if you find that the Defendant, Ralph D. Abernathy, did not publish on his behalf the article in question which appeared in the New York Times on Tuesday, March

29, 1960, you must find a verdict for him." Refused, Jones, Judge.

48. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.5. I charge you, gentlemen of the jury, that if you find that the defendant, Ralph D. Abernathy, did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict for him." Refused, Jones, Judge.

49. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.6. I charge you, gentlemen of the jury, that if from the evidence you find that the Defendant, Ralph D. Abernathy, did not directly or through some other person authorize to act for him; publish or consent to the publication of the statements complained of in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

50. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

[fol. 2174] "T.8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the Defendant, Ralph D. Abernathy, was the author or the publisher of the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

51. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.9. I charge you, gentlemen of the jury, to consider a libel, there must be a publication as well as a writing,

and if the publication was made without the consent of the Defendant, Ralph D. Abernathy, the offense is not complete as to him, and you must return a verdict in favor of him." Refused, Jones, Judge.

52. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.11. I charge you, gentlemen of the jury, that if you find from the evidence that the Defendant, Ralph D. Abernathy, had no knowledge of the writing or publication of the advertisement, prior to publication, that appeared in the New York Times, dated, Tuesday, March 29, 1960, you must return a verdict for the defendant." Refused, Jones, Judge.

53. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.12. I charge you, gentlemen of the jury, that the burden of proof is upon the plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, Ralph D. Abernathy, directly, or indirectly, or through some other person authorized to act for him, published or consented to the publication of the statements complained of which appeared in the New York Times on March 29, 1960, and unless from the evidence you are convinced that said defendant did directly or indirectly or through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the defendant, Ralph D. Abernathy." Refused, Jones, Judge.

54. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.13. I charge you, gentlemen of the jury, that if you believe from the evidence that the Defendant, Ralph D. Abernathy, did not authorize the use of his name in connection with the publication of the advertisement

which appeared in the New York Times on March 29, 1960, you must return a verdict for said defendant." Refused, Jones, Judge.

55. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.14. Gentlemen of the jury, if you believe from the evidence that the Defendant, Ralph D. Abernathy, did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said defendant." Refused, Jones, Judge.

[fol. 2175] 56. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.16. I charge you, gentlemen of the jury, if from the evidence you believe that the defendant, Ralph D. Abernathy, did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29, 1960, then, as a matter of law, there is no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant." Refused, Jones, Judge.

57. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never authorized anyone to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the Plaintiff wrote a letter to the Defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, and if you further believe from

the evidence that the Defendant did not reply to the plaintiff letter, I charge you as a matter of law that the Defendant's failure to reply to Plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the Defendant to reply to Plaintiff's letter, and you must return a verdict for the Defendant, Ralph D. Abernathy." Refused, Jones, Judge.

58. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant, Ralph D. Abernathy." Refused, Jones, Judge.

59. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant, Ralph D. Abernathy consented to the use of his name in connection with the publication of the advertisement complained of, you must find for said defendant." Refused, Jones, Judge.

60. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Ralph D. Abernathy:

"T.20. I charge you, gentlemen of the jury, that unless on the evidence you are convinced that the defendant, Ralph D. Abernathy, had knowledge of the writing or publication of the advertisement complained of, prior to publication in the New York Times, dated Tuesday, March 29, 1960, you must find for the defendant." Refused, Jones, Judge.

61. For that the trial court erred in refusing to give [fols. 2176-2177] the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.1. I charge you, gentlemen of the jury, to find a verdict in favor of the Defendant, Rev. J. E. Lowery." Refused, Jones, Judge.

62. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.2. I charge you, gentlemen of the jury, that if you find that the Defendant, J. E. Lowery, did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

63. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.3. I charge you, gentlemen of the jury, that if you find the Defendant, J. E. Lowery, did not consent to the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

64. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.4. I charge you, gentlemen of the jury, that if you find that the Defendant, J. E. Lowery, did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

65. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.5. I charge you, gentlemen of the jury, that if you find that the Defendant, J. E. Lowery, did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on

Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

66. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.6. I charge you, gentlemen of the jury, that if from the evidence you find that the Defendant, J. E. Lowery, did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

67. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the Defen- [fol. 2178] dant, J. E. Lowery, was the author of the publisher of the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

68. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.9. I charge you, gentlemen of the jury, to constitute a libel, there must be publication as well as a writing, and if the publication was made without the consent of the Defendant, J. E. Lowery, the offense is not complete as to him and you must return a verdict in favor of him." Refused, Jones, Judge.

69. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.11. I charge you, gentlemen of the jury, that if you find from the evidence that the Defendant, J. E.

Lowery, had no knowledge of the writing or publication of the advertisement, prior to publication, that appeared in the New York Times, dated, Tuesday, March 29, 1960, you must return a verdict for the said Defendant." Refused, Jones, Judge.

70. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.12. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, J. E. Lowery, directly, or indirectly, or through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the defendant, J. E. Lowery." Refused, Jones, Judge.

71. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.13. I charge you, gentlemen of the jury, that if you believe from the evidence that the defendant, J. E. Lowery, did NOT authorize the use of his name in connection with the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

72. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.14. Gentlemen of the jury, if you believe from the evidence that the Defendant, J. E. Lowery, did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

73. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

[fol. 2179] "T.16. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant J. E. Lowery, did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29, 1960, then, as a matter of law, there was no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant." Refused, Jones, Judge.

74. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never authorized anyone to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the Plaintiff wrote a letter to the Defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, and if you further believe from the evidence that the Defendant did not reply to the Plaintiff's letter, I charge you as a matter of law that the Defendant's failure to reply to Plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the Defendant to reply to Plaintiff's letter, and you must return a verdict for the Defendant, J. E. Lowery." Refused, Jones, Judge.

75. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant, J. E. Lowery." Refused, Jones, Judge.

76. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant, J. E. Lowery, consented to the use of his name in connection with the publication of the advertisement complained of, you must find for said defendant." Refused, Jones, Judge.

77. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, J. E. Lowery:

"T.20. I charge you, gentlemen of the jury, that unless on the evidence you are convinced that the defendant, J. E. Lowery, had knowledge of the writing or publication of the advertisement complained of, prior to publication in the New York Times, dated Tuesday, March 29, 1960, you must find for the defendant." Refused, Jones, Judge.

78. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.1. I charge you, gentlemen of the jury, to find a verdict in favor of the Defendant, S. S. Seay, Sr." Refused, Jones, Judge.

[fol. 2180] 79. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.2. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

80. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.3. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not consent to the publication of the article in question which appeared in the New York Times on March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

81. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.4. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

82. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.5. I charge you, gentlemen of the jury, that if you find that the Defendant, S. S. Seay, Sr., did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

83. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.6. I charge you, gentlemen of the jury, that if from the evidence you find that the Defendant, S. S. Seay, Sr., did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

84. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the Defendant, S. S. Seay, Sr., was the author or the publisher of the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

85. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at [fol. 2181] the request of the defendant, S. S. Seay, Sr.:

"T.9. I charge you, gentlemen of the jury, to constitute a libel, there must be a publication as well as a writing, and if the publication was made without the consent of the Defendant, S. S. Seay, Sr., the offense is not complete as to him and you must return a verdict in favor of him." Refused, Jones, Judge.

86. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.11. I charge you, gentlemen of the jury, that if you find from the evidence that the Defendant, S. S. Seay, Sr., had no knowledge of the writing or publication of the advertisement, prior to publication that appeared in the New York Times, dated, Tuesday, March 29, 1960, you must return a verdict for the said Defendant." Refused, Jones, Judge.

87. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.12. I charge you, gentlemen of the jury, that the burden of proof is upon the Plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, S. S. Seay, Sr., directly, or indirectly, or through some other person authorized to act for him,

published or consented to the publication of the statements complained of which appeared in the New York Times on March 29, 1960, and unless from the evidence you are convinced that said Defendant did directly or indirectly through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the defendant, S. S. Seay, Sr." Refused, Jones, Judge.

88. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr."

"T.13. I charge you, gentlemen of the jury, that if you believe from the evidence that the Defendant S. S. Seay, Sr., did NOT authorize the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

89. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.14. Gentlemen of the jury, if you believe from the evidence that the Defendant, S. S. Seay, Sr., did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

90. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.16. I charge you, gentlemen of the jury, if from the evidence you believe that the defendant, S. S. Seay, Sr., did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29,

[fol. 2182] 1960, then, as a matter of law, there was no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant." Refused, Jones, Judge.

91. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never authorized anyone to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the Plaintiff wrote a letter to the Defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, and if you further to the Plaintiff's letter, I charge you as a matter of law that the Defendant's failure to reply to Plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the Defendant to reply to Plaintiff's letter, and you must return a verdict for the Defendant, S. S. Seay, Sr." Refused, Jones, Judge.

92. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant, S. S. Seay, Sr." Refused, Jones, Judge.

93. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant, S. S. Seay, Sr., consented to the use of his name in connection with the publication of the advertisement complained of, you must find for the defendant." Refused, Jones, Judge.

94. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, S. S. Seay, Sr.:

"T.20. I charge you, gentlemen of the jury, that unless on the evidence you are convinced that the defendant S. S. Seay, Sr. had knowledge of the writing or publication of the advertisement complained of, prior to publication in the New York Times, dated Tuesday, March 29, 1960, you must find for the defendant." Refused, Jones, Judge.

95. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth.

"T.1. I charge you, gentlemen of the jury, to find a verdict in favor of the Defendant, Fred L. Shuttlesworth." Refused, Jones, Judge.

96. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

[fol. 2183] "T.2. I charge you, gentlemen of the jury, that if you find that the Defendant, Fred L. Shuttlesworth, did not authorize the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

97. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.3. I charge you, gentlemen of the jury, that if you find that the Defendant, Fred L. Shuttlesworth, did not consent to the publication of the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

98. For that the trial court erred in refusing to give the following written instruction to the jury on this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.4. I charge you, gentlemen of the jury, that if you find that the Defendant, Fred L. Shuttlesworth, did not publish or cause to be published the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict for him." Refused, Jones, Judge.

99. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.5. I charge you, gentlemen of the jury, that if you find that the Defendant, Fred L. Shuttlesworth, did not authorize anyone to publish on his behalf the article in question which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

100. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.6. I charge you, gentlemen of the jury, that if from the evidence you find that the Defendant, Fred L. Shuttlesworth, did not, either directly or through some other person authorized to act for him, publish or consent to the publication of the statements complained of which appeared in the New York Times on Tuesday, March 29, 1960, you must find a verdict in favor of him." Refused, Jones, Judge.

101. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.8. I charge you, gentlemen of the jury, that unless from the evidence you are convinced that the Defendant, Fred L. Shuttlesworth, was the author or the publisher of the advertisement which appeared in the New York Times (the subject matter of this suit) on Tuesday, March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

102. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.9. I charge you, gentlemen of the jury, to constitute a libel, there must be a publication as well as a writing, and if the publication was made without the consent [fol. 2184] of the Defendant, Fred L. Shuttlesworth, the offense is not complete as to him and you must return a verdict in favor of him." Refused, Jones, Judge.

103. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.11. I charge you, gentlemen of the jury, that if you find from the evidence that the Defendant, Fred L. Shuttlesworth, had no knowledge of the writing or publication of the advertisement prior to publication, that appears in the New York Times, dated, Tuesday, March 29, 1960, you must return a verdict for the said Defendant." Refused, Jones, Judge.

104. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.12. I charge you, gentlemen of the jury, that the burden of proof is upon the plaintiff to reasonably satisfy you from the evidence in this case that the Defendant, Fred L. Shuttlesworth, directly, or indirectly, or through some other person authorized to act for him, published or consented to the publication of the statements complained of which appeared in the New York Times on March 29, 1960, and unless from the evidence you are convinced that said Defendant did directly or indirectly or through some other person authorized to act for him, published or consented to the publication of said statements, then you must return a verdict for the defendant, Fred L. Shuttlesworth." Refused, Jones, Judge.

105. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.13. I charge you, gentlemen of the jury, that if you believe from the evidence that the Defendant, Fred L.

Shuttlesworth, did Not authorize the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

106. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.14. Gentlemen of the jury, if you believe from the evidence that the Defendant, Fred L. Shuttlesworth, did not consent to the use of his name in connection with the publication of the advertisement which appeared in the New York Times on March 29, 1960, you must return a verdict for said Defendant." Refused, Jones, Judge.

107. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.16. I charge you, gentlemen of the jury, if from the evidence you believe that the defendant Fred L. Shuttlesworth did not publish or cause to be published the alleged libelous matter contained in the advertisement which appeared in the New York Times on March 29, 1960, then, as a matter of law, there was no legal obligation on the part of this defendant to reply to the letter written by the plaintiff to this defendant demanding a retraction of the alleged libelous matters, and you must return a verdict for said defendant." Refused, Jones, Judge.

[fol. 2185] 108. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.17. I charge you, gentlemen of the jury, that if from the evidence you believe that the defendant never authorized anyone to affix his name to the advertisement which is the subject matter of this suit, and if you further believe from the evidence that the plain-

tiff wrote a letter to the defendant demanding a retraction of certain alleged libelous matter contained in said advertisement, and if you further believe from the evidence that the Defendant did not reply to the Plaintiff's letter, I charge you, as a matter of law, that the Defendant's failure to reply to Plaintiff's letter cannot be considered by you as an admission that he published the alleged libelous matter; under such circumstances the law does not require the Defendant to reply to Plaintiff's letter, and you must return a verdict for the Defendant, Fred L. Shuttlesworth." Refused, Jones, Judge.

109. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.18. Gentlemen of the jury, if you believe the evidence in this case, you must return a verdict for the defendant Fred L. Shuttlesworth." Refused, Jones, Judge.

110. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.19. Gentlemen of the jury, unless from the evidence you are convinced that the defendant Fred L. Shuttlesworth consented to the use of his name in connection with the publication of the advertisement complained of, you must find for said defendant." Refused, Jones, Judge.

111. For that the trial court erred in refusing to give the following written instruction to the jury in this cause at the request of the defendant, Fred L. Shuttlesworth:

"T.20. I charge you, gentlemen of the jury, that unless on the evidence you are convinced that the defendant, Fred L. Shuttlesworth had knowledge of the writing or publication of the advertisement complained of, prior to publication of the advertisement in the New York Times, dated, Tuesday, March 29, 1960, you must find for the defendant." Refused, Jones, Judge.

112. For that the trial court erred in entering its judgment in behalf of the plaintiff in this cause. (Tr. 1958)

113. For that the trial court erred in entering its final judgment of November 3, 1960, in favor of plaintiff and against these defendants in this cause. (Tr. 1958)

114. For that the trial court erred in entering its judgment of November 3, 1960, based upon the verdict of the jury in this cause, in favor of plaintiff and against these defendants. (Tr. 1958)

115. For that the trial court erred in entering its final judgment against these defendants in this cause. (Tr. 1958)

116. For that the trial court erred in overruling these [fol. 2186] defendants' demurrers as amended to plaintiff's complaint and in thereby holding that said complaint stated a cause of action deprived these defendants of their property without due process of law in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States. (Tr. 86)

117. For that the trial court erred in its oral charge to the jury wherein the Court instructed the jury as follows:

> "So, as I said, if you are reasonably satisfied from the evidence before you, considered in connection with the rules of law the Court has stated to you, you would come to consider the question of damage, complained of proved to your reasonable satisfaction and aimed at the plaintiff in this case, is libelous per se, then punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown."

and in so instructing the jury the trial court deprived these defendants of their property without due process of law in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States, to which portion of such oral charge of the Court these defendants duly and legally excepted. (Tr. 1953, 1957)

118. For that the trial court erred in its oral charge to the jury wherein the court instructed the jury as follows:

"So, as I said, if you are reasonably satisfied from the evidence before you, considered in connection with the rules of law the Court has stated to you, you would come to consider the question of damages and, where as here, the Court has ruled the matter complained of proved to your reasonable satisfaction and aimed at the plaintiff in this case, is libelous per se, then punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown."

and in so instructing the jury the trial court denied to these defendants the equal protection of the law as guaranteed to them by the provisions of the Fourteenth Amendment to the Constitution of the United States, to which portion of such oral charge of the Court these defendants duly and legally excepted. (Tr. 1953, 1957)

119. For that the trial court erred when it denied these defendants of their rights to be heard on their motion for a new trial on those grounds of said motion numbered 27 stating that there existed an irregularity in the proceedings of the Court by which these defendants were prevented from having a fair trial in that defendants were subjected to the exercise of judicial power before a tribunal which required its very facilities to be segregated on the basis of race and color and that the imposition of judicial power upon defendants in a segregated tribunal denied to defendants their right to due process and equal protection of the law as guaranteed him under the Alabama [fol. 2187] and Federal Constitutions. (Tr. 2063)

120. For that the trial court erred when it denied these defendants of their rights to be heard on their motion for a new trial on those grounds of said motion numbered 26, stating that there existed an irregularity in the proceedings of the Court by which the parties defendant were prevented from having a fair trial in that the Court is a member of the Board of Jury Supervisors of Montgomery, Alabama; and that said Act being unconstitutional, said selection of jurors thereunder by the Court being in violation of Article I, Section 11 of Code of 1901 and the Code of Alabama (1940) Title 7, Section 260, in that the Court

as a member of the Board so selecting those persons who are to decide the case decided both the facts and the law. (Tr. 2063)

121. For that the trial court erred in depriving these defendants of their rights to be heard on their motion for a new trial on those grounds of said motion numbered 30 and 31, stating that the record is so devoid of evidentiary support of the allegations alleged in the complaint in that the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant was legally responsible for the publication of the advertisement which is the basis of this suit, the verdict of the jury and the judgment of the court against the defendant in the sum of $500,000.00 deprived these defendants of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States. (Tr. 2064)

122. For that the trial court erred in depriving these defendants of their rights to be heard on their motion for a new trial on those grounds of said motion numbered 38 and 39, stating that the verdict of the jury is contrary to the law in the case and the facts in the case. (Tr. 2065)

Charles S. Conley, 530 South Union Street, Suite A, Montgomery 4, Alabama;

Vernon Z. Crawford, 578 Davis Avenue, Mobile, Alabama;

By Charles S. Conley, Attorney for Appellants, Ralph D. Abernathy, Fred L. Shuttlesworth, J. E. Lowery, and S. S. Seay, Sr.

[fol. 2188] Certificate of service (omitted in printing).

Without waiving his motion to strike the foregoing purported assignments of error, appellee says there is no error in the record.

M. R. Nachman, Jr., Attorney for Appellee.

[fol. 2188a] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 2189] [Filed April 17, 1961—Supreme Court of Alabama, J. Render Thomas, Clerk.]

On Appeal to Supreme Court of Alabama

From Circuit Court of Montgomery County

The New York Times Company,
A Corporation, Appellant,

vs.

L. B. Sullivan, Appellee.

Certificate of Appeal

The State of Alabama
Montgomery County

I, John R. Matthews, Clerk of the Circuit Court of Montgomery County, hereby certify that in said Court on the 3rd day of November, 1960, in a trial before a jury, a verdict was rendered in favor of L. B. Sullivan and against The New York Times Company, a corporation, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr. and J. E. Lowery for the sum of $500,000.00, and that judgment was thereupon entered against all of said parties for the sum of $500,000.00.

I further certify that the New York Times Company, a corporation, filed its motion to set aside the verdict of the jury and the judgment of the Court entered thereon and to grant it a new trial and that on the 17th day of March, 1961, said motion for a new trial was overruled and that on the 13th day of April, 1961, the said New York Times Company, a corporation, gave notice of appeal from the judgment of said Court to the Supreme Court of Alabama and did supersede said judgment by filing a Supersedeas Bond with St. Paul Fire & Marine Insurance Company as surety thereon, which said bond has been duly approved.

Witness my hand and the seal of said Court is hereto affixed, this 14 day of April, 1961.

John R. Matthews, Clerk, Circuit Court of Montgomery County.

[fol. 2190] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3d Div., No. 961

THE NEW YORK TIMES COMPANY, Appellant,

v.

L. B. SULLIVAN, Appellee.

MOTION OF APPELLEE TO STRIKE ASSIGNMENTS OF ERROR —Filed September 8, 1961

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Now comes L. B. Sullivan, appellee in the above-entitled cause, by and through his attorneys of record, and moves this Court to strike the purported assignments of error attempted to be filed by Ralph D. Abernathy, Fred L. Shuttlesworth, J. E. Lowery, and S. S. Seay, Sr. (hereinafter called "individual defendants"), and mailed to attorneys for appellee on August 21, 1961; and moves to strike each assignment of error, separately and severally; and, in the alternative, to dismiss the attempted appeal by said persons in this cause, if this Court should construe actions taken heretofore by these persons as an attempt to appeal to this Court; and as grounds assigns to the assignments of error, as a whole and to each assignment separately and severally, the following separate and several grounds:

1. Said individual defendants have not perfected an appeal in this cause in the manner prescribed by the statutes of Alabama, and particularly by Title 7 §§ 776, 788, and 792, Code of Alabama 1940, by filing a good and sufficient security for costs of appeal, approved by the Clerk of the Circuit Court of Montgomery County, Alabama.

2. Said individual defendants have not attempted to perfect an appeal in the manner provided by the statutes of Alabama, and particularly the foregoing specified provisions thereof, by filing a good and sufficient bond for costs of appeal, approved by the Clerk of the Circuit Court of Montgomery County, Alabama.

3. The paper filed in the office of the Clerk of the Circuit Court of Montgomery County, Alabama, by the said individual defendants on April 27, 1961 (R. 2108), is not a compliance with the statutes of Alabama regarding the manner of perfecting an appeal, and particularly with those provisions specified in ground 1 of this motion, and is [fol. 2191] therefore not effective as a timely appeal to this Court from the court below within six months of the date of the final judgment against these said individual defendants, rendered on November 3, 1960.

4. Said individual defendants are not entitled, by virtue of Title 7, § 804, Code of Alabama 1940, to assign separate errors, but are limited to uniting in the errors assigned by appellant The New York Times Company.

5. The purported assignments of error attempted to be filed in this Court by the said individual defendants seek to raise matters beyond the scope of and not involved in the appeal of appellant The New York Times Company. Said purported assignments seek to assign error said to be involved in an asserted holding by the court below that these said individual defendants had failed to continue their motions for new trial; and also seek to assign error relating to grounds of said defunct motion.

6. The paper filed in the Circuit Court of Montgomery County, Alabama, by the said individual defendants (R. 2108), and styled "Notice of Joining in Appeal," will not support an appeal, nor will it support separate and different assignments of error in this Court by the said individual defendants.

7. Appellant The New York Times Company did not appeal from any ruling of the Circuit Court of Montgomery County, Alabama, "that the individual defendants'

motion for a new trial was no longer before the court because of the alleged failure to continue the motion for a new trial by attorneys for the individual defendants," and, accordingly, any such ruling by the Circuit Court of Montgomery County, Alabama, is not before this Court for review; nor are any of the matters sought to be raised in the discontinued motions for new trial filed in the court below by these individual defendants.

8. The paper filed with the Clerk of the Circuit Court of Montgomery County, Alabama (R. 2108), styled "Notice of Joining in Appeal," is not sufficient to constitute an appearance in this Court, and a "uniting" in the appeal of The New York Times Company, within the meaning of Title 7, § 804, Code of Alabama 1940.

Wherefore, premises considered, appellee moves that this Court strike the purported assignments of error as a whole, attempted to be filed by said individual defendants in this Court, as aforesaid; and appellee moves separately and severally that each such purported assignment of error be stricken. And appellee moves, in the alternative, [fol. 2192] that if this Court construe actions heretofore taken by the said individual defendants as an attempt to appeal from the judgment of the Circuit Court of Montgomery County, Alabama, of November 3, 1960, or from any other action of said Court, such appeal be dismissed. And appellee further prays for such other, further, and different relief as this Court may deem appropriate.

Respectfully submitted,

L. B. Sullivan, Appellee, By Sam Rice Baker, M. R. Nachman, Jr., Steiner, Crum & Baker, Attorneys for Appellee.

Certificate of Service (omitted in printing).

[fol. 2193] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

THIRD DIVISION

No. 961

[Title omitted]

MOTION OF INDIVIDUAL APPELLANTS TO DISMISS MOTION TO STRIKE—Filed September 21, 1961

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the State of Alabama:

Come now Ralph D. Abernathy, S. S. Seay, Sr., Fred L. Shuttlesworth, and J. E. Lowery, Appellants in the above action (hereinafter called individual-appellants), by their attorneys, and move this Honorable Court to dismiss the motion filed by the Appellee, L. B. Sullivan, seeking to have this Honorable Court dismiss the assignments of error timely filed in the above action by the individual-appellants herein and to dismiss the appeal presently before this Honorable Court, on the following grounds:

1. That the above named individual-appellants were cited to appeal, pursuant to Title 7, Sec. 801, Code of Alabama, 1940, by the New York Times Company, a Corporation, a co-defendant in an action originally brought in the Circuit Court of Montgomery County, Alabama.

2. That the Appellant, New York Times Company, a Corporation, on the 13th Day of April, 1961, took an appeal to the Supreme Court of Alabama from the judgment rendered in the Circuit Court of Montgomery County, on, to wit, the 3rd day of November, 1960, in favor of L. B. Sullivan, against the New York Times Company, a Corporation, Ralph D. Abernathy, S. S. Seay, Sr., Fred L. Shuttlesworth, and J. E. Lowery, defendants below.

3. That prior to the 27th day of April, 1961, an appeal had not been taken in the name of the individual appellants, Ralph D. Abernathy, S. S. Seay, Sr., Fred L. Shuttlesworth, and J. E. Lowery, nor had they otherwise joined in the appeal.

4. That the individual-appellants were summoned to appeal before this Honorable Court, at the time when the appeal was returnable, and to otherwise unite in said appeal, if the individual appellants deemed it meet and proper.

5. That service of the "citation to appeal" was accepted by their attorney of record and that their said attorney waived further service by the sheriff of Montgomery County, on the 27th day of April, 1961. (See: 1-A, page 2109, of the Transcript filed in the above case.)

[fol. 2194] 6. That the Code of Alabama, 1940, as recomplied in 1958, is identical with the Code of 1907, Sec. 2884, as amended by Gen. Acts 1911, p. 589, which is to the effect that defendants not appealing from a judgment against them may join in another defendant's appeal and assign error. See, *New Morgan County Building & Loan Ass'n* v. *Plemmons*, 210 Ala. 16, 97, So. 46, and where a decree was entered in favor of the complainant, and the first defendant appealed, the second defendant was entitled to join in the appeal even though no citation was issued to the second defendant. *Pickard* v. *Osborn*, 261 Ala. 206, 73 So. 2d 542 (1954).

7. That neither the validity of the above named statute, nor the soundness of the cases decided by this Honorable Court on repeated occasions in reference thereto, is a proper issue in the above styled case of which the Appellee is a party.

8. Wherefore, the individual-appellants respectfully request this Honorable Court to deny Appellee's motion to strike the individual-appellants assignments of error as a whole, to deny Appellee's motion to strike any particular assignment of error, and to further deny in the alternative, Appellee's motion to dismiss the appeal of your individual-appellants.

Charles S. Conley, Attorney for individual-appellants, 530 South Union Street, Montgomery 4, Alabama.

Certificate of Service (omitted in printing).

[fol. 2195]

IN THE SUPREME COURT OF ALABAMA

The Court met pursuant to adjournment.

Present: All the Justices.

[Title omitted]

MINUTE ENTRY OF ARGUMENT AND SUBMISSION —December 19, 1961

Come the parties by attorneys and argue and submit this cause on motions and on merits for decision.

[fol. 2196]

IN THE SUPREME COURT OF THE STATE OF ALABAMA

Special Term, 1962

3 Div. 961

THE NEW YORK TIMES COMPANY, A Corporation

v.

L. B. SULLIVAN

Appeal from Montgomery Circuit Court

OPINION

HARWOOD, Justice

This is an appeal from a judgment in the amount of $500,000.00 awarded as damages in a libel suit. The plaintiff below was L. B. Sullivan, a member of the Board of [fol. 2197] Commissioners of the City of Montgomery, where he served as Police Commissioner. The defendants below were The New York Times, a corporation, and four individuals, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery.

Service of the complaint upon The New York Times was by personal service upon Dan McKee as an agent of the defendant, and also by publication pursuant to the provisions of Sec. 199(1) of Tit. 7, Code of Alabama 1940.

The Times moved to quash service upon it upon the grounds that McKee was not its agent, and The Times, a foreign corporation, was not doing business in Alabama, and that service under Sec. 199(1) was improper, and to sustain either of the services upon it would be unconstitutional.

After hearing upon the motion to quash, the lower court denied such motion.

In this connection the plaintiff presented evidence tending to show The Times gathers news from national press services, from its staff correspondents, and from string correspondents, sometimes called "stringers."

The Times maintained a staff correspondent in Atlanta, Claude Sitton, who covered eleven southern states, including Alabama.

During the period from 1955 through April 1960, regular staff correspondents of The Times spent 153 days in Alabama to gather news articles for submission to The Times. Forty-nine staff news articles so gathered were introduced in evidence.

Sitton himself was assigned to cover in Alabama, at [fol. 2198] various times, the so-called "demonstrations," the hearings of the Civil Rights Commission in Montgomery, and proceedings in the United States District Court in Montgomery. During his work in Alabama, he also conducted investigations and interviews in such places as Clayton and Union Springs. On some of his visits to Alabama, Sitton would stay as long as a week or ten days.

In May of 1960, he came to Alabama for the purpose of covering the Martin Luther King trial. After his arrival in Montgomery, he "understood" an attempt would be made to serve him. He contacted Mr. Roderick McLeod, Jr., an attorney representing The Times, and was advised to leave Alabama. Shortly after this he called McKee, the "stringer" in Montgomery, and talked generally about the King trial with him.

In addition, The Times made an active effort to keep a resident "stringer" in Montgomery at all times, and as a matter of policy wanted to have three "stringers" in Alabama at all times.

The work of "stringers" was outlined by Sitton as follows: "When The Times feels there is a news story of note going on in an area where a particular stringer lives, • • • The Times calls on a stringer for a story."

"Stringers" fill out blank cards required by The Times, which refer to them as "our correspondents." Detailed instructions are also given to "stringers" by The Times.

"Stringers" also on occasions initiate stories to The Times by telephone recordation. If these stories were not accepted, The Times pays the telephone tolls.

[fol. 2199] A "stringer" is usually employed by another newspaper, or news agency and is called upon for stories occasionally, or offers stories upon his own. A "stringer" is paid at about the rate of a penny a word. No deductions are made from these payments for such things as income tax, social security, insurance contributions, etc., and "stringers" are not carried on the payroll of The Times. Up to July 26 for the year 1960, The Times had paid Chadwick, the "stringer" in Birmingham, $135.00 for stories accepted, and paid McKee $90.00.

It further appears that upon receipt of a letter from the plaintiff Sullivan demanding a retraction and apology for the statements appearing in the advertisement, which is the basis of this suit, the general counsel of The Times in New York requested the Assistant Managing Editor of The Times to have an investigation made of the correctness of the facts set forth in the advertisement in question. The Times thereupon communicated with McKee and asked for a report. After his investigation, McKee sent a lengthy wire to The Times setting forth facts which demonstrated with clarity the utter falsity of the allegations contained in the advertisement. McKee was also paid $25.00 by The Times for help given Harrison Salisbury, a staff correspondent of The Times when he was in Alabama on an assignment in the spring of 1960.

The Times also has a news service and sells to other papers stories sent it by its staff correspondents, "string-

ers," and local reporters. In this connection the lower court observed:

> [fol. 2200] "Obviously, The Times considered the news gathering activities of these staff correspondents and 'stringers' a valuable and unique complement to the news gathering facilities of the Associated Press and other wire services of which The Times is a member. The stories of the 'stringers' appear under the 'slug' 'Special to The New York Times,' and there were 59 such 'specials' in the period from January 1, 1956, through April of 1960."

Advertising

About three quarters of the revenue of The Times comes from advertisements. In 1956, The New York Times Sales, Inc., was set up. This is a wholly owned subsidiary of The Times and its sole function is to solicit advertising for The Times only.

All of the officials of "Sales" are also officials of The Times.

Two solicitors for "Sales," as well as two employees of The Times have at various times come into Alabama seeking advertising for The Times. Between July 1959 and June 3, 1960, one representative spent over a week in this State, another spent a week and a third spent three days. Advertising business was solicited in Birmingham, Montgomery, Mobile, and Selma. Between January 1, 1960 and May 1960, inclusive, approximately seventeen to eighteen thousand dollars worth of advertising was thus sold in Alabama, while in the period of 1956 through April 1960, revenues of $26,801.64 were realized by The Times from Alabama advertisers.

[fol. 2201]

Circulation

The Times sends about 390 daily, and 2,500 Sunday editions into Alabama.

Shipments are made by mail, rail, and air, with transportation charges being prepaid by The Times. Dealers are charged for the papers.

Credit is given for unsold papers and any loss in transit is paid by The Times.

Claims for losses are handled by baggagemen in Alabama, and The Times furnishes claim cards to dealers who bring them to the baggagemen, The Times paying for losses or incomplete copies upon substantiation by the local Alabama baggagemen.

Account cards of various Alabama Times dealers show that credit was thus given for unsold merchandise.

We are here confronted with the question of in personam jurisdiction acquired by service upon an alleged representative of a foreign corporation.

The severe limitations of the doctrine of *Bank of Augusta* v. *Earle* (1839) 13 Pet. (U.S.) 519, that a corporation "must dwell in the place of its creation, and cannot migrate to another sovereignty," proving unsatisfactory, the courts, by resort to fictions of "presence," "consent," and "doing business," attempted to find answers compatible with social and economic needs. Until comparatively recent years these bases of jurisdictions have tended only to confuse rather than clarify, leading the late Judge Learned Hand to remark that it was impossible to determine any established rule, but that "we must step from tuft to tuft across the [fol. 2202] morass." *Hutchinson* v. *Chase and Gilbert,* (2nd. Cir.) 45 F. 2d 139.

In *Pennoyer* v. *Neff,* 95 U.S. 714, the court held that the Fourteenth Amendment to the Federal Constitution required a relationship between the State and the person upon whom the State seeks to exercise personal jurisdiction, and there must be a reasonable notification to the person upon whom the State seeks to exercise its jurisdiction. The required relationship between the State and the person was held to be presence within the State, and as a corollary, no state could "extend its process beyond that territory so as to subject either persons or property to its decisions."

In *Hess* v. *Pawloski,* 274 U.S. 352 (1927), the United States Supreme Court sustained the validity of a non-resident motorist statute which provided that the mere act of driving an automobile in a state should be deemed an appointment of a named state official as agent to receive service in a suit arising out of the operation of the motor

vehicle on the highway of such state. The dangerous nature of a motor vehicle was deemed to justify the statute as a reasonable exercise of police power to preserve the safety of the citizens of the state, and the consent for service exacted by the State for use of its highways was reasonable.

In 1935 the same reasoning was applied in upholding a state statute permitting service on an agent of a non-resident individual engaged in the sale of corporate securities in the state in claims arising out of such business. *Henry L. Doherty and Co.* v. *Goodman*, 294 U.S. 623.

Corporations being mere legal entities and incapable of having physical presence as such in a foreign state, and [fol. 2203] its agents being limited by the scope of their employment, neither the "presence" theory nor the "consent" theory could satisfactorily be applied as a basis for personal jurisdiction.

As to personal jurisdiction over non-resident corporations, the rule therefore evolved that such jurisdiction could be based upon the act of such corporations "doing business" in a state, though echoes of the "presence" and "consent" doctrines may be found in some decisions purportedly applying the "doing business" doctrine in suits against foreign corporations. See *Green* v. *Chicago Burlington and Quincy Ry.*, 205 U.S. 530, when "presence" of a corporation was found to exist from business done in a state, and *Old Wayne Mutual Life Ass'n. of Indianapolis* v. *McDonough*, 204 U.S. 8, where implied consent to jurisdiction was said to arise from business done in the state of the forum.

The term "doing business" carries no inherent criteria. It is a concept dependent upon each court's reaction to facts. These reactions were varied, and the conflicting decisions evoked the observation of Judge Learned Hand, then fully justified, but no longer apt since the "morass" has been considerably firmed up by subsequent decisions of the United States Supreme Court.

In *International Shoe Co.* v. *State of Washington, et al.*, 326 U.S. 310, the old bases of personal jurisdiction were recast, the court saying:

> "To say that the corporation is so far 'present' there as to satisfy due process requirements . . . is to beg

[fol. 2204] the question to be decided. For the terms 'present' or 'presence' are used merely to symbolize those activities of the corporation's agent within the state which courts will deem to be sufficient to satisfy the demands of due process . . . Those demands may be met by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there. An 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this connection."

That the new test enunciated is dependent upon the degree of contacts and activities exercised in the forum state is made clear, the court saying:

"... due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"

In accord with the above doctrine is our case of *Boyd* v. *Warren Paint and Color Co.*, 254 Ala. 687, 49 So. 2d 559. [fol. 2205] In 1957 the United States Supreme Court handed down its opinion in *McGee* v. *International Life Insurance Co.*, 355 U.S. 220. This case involved the validity of a California judgment rendered in a proceeding where service was had upon the defendant company by registered mail addressed to the respondent at its principal place of business in Texas. A California statute subjecting foreign corporations to suit in California on insurance contracts with California residents even though such corporations could not be served with process within its borders.

The facts show that petitioner's son, a resident of California, bought a life insurance policy from an Arizona corporation, naming petitioner as beneficiary. Later, respondent, a Texas corporation, agreed to assume the insurance

obligations of the Arizona company, and mailed a re-insurance certificate to the son in California, offering to insure him in accordance with his policy. He accepted the offer and paid premiums by mail from California to the company's office in Texas. Neither corporation ever had any office in California, nor any agent therein, nor had solicited or done any other business in that state. Petitioner sent proofs of her son's death to respondent, but it refused to pay the claim.

The Texas court refused to enforce the California judgment holding it void under the Fourteenth Amendment because of lack of valid service. *McGee* v. *International Life Insurance Company*, 288 S.W. 2d 579.

In reversing the Texas court, the United States Supreme Court wrote:

> "Since *Pennoyer* v. *Neff*, 95 U.S. 714, this Court has held that the Due Process Clause of the Fourteenth [fol. 2206] Amendment places some limit on the power of state courts to enter binding judgments against persons not served with process within their boundaries. But just where this line of limitation falls has been the subject of prolific controversy, particularly with respect to foreign corporations. In a continuing process of evolution this Court accepted and then abandoned 'consent,' 'doing business,' and 'presence' as the standard for measuring the extent of state judicial power over such corporations. See Henderson, The Position of Foreign Corporations in American Constitutional Law, c. V. More recently in *International Shoe Co.* v. *Washington*, 326 U.S. 310, the Court decided that 'due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." *Id.*, at 316.
>
> "Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. In part this is at-

tributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and [fol. 2206a] may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity."

Under the above and more recent doctrines, we are clear to the conclusion that the activities of The New York Times, as heretofore set out, are amply sufficient, to more than meet the minimal standards required for service upon its representative McKee.

The adjective "string" in McKee's designation is redundant, and in no wise lessens his status as a correspondent and agent of The New York Times in Alabama. Justice demands that Alabama be permitted to protect its citizens from tortious libels, the effects of such libels certainly occurring to a substantial degree in this State.

Substituted Service

By Act No. 282, approved 5 August 1953 (Acts of Alabama, Reg. Sess. 1953, page 347) amending a prior Act of 1949, it was provided that any non-resident person, firm, partnership or corporation, not qualified to do business in this State, who shall do any business or perform any character of work or service in this State shall by so doing, be deemed to have appointed the Secretary of State to be his lawful attorney or agent of such non-resident, upon [fol. 2207] whom process may be served in any action accruing from the acts in this State, or incident thereto, by any non-resident, or his or its agent, servant or employee.

The act further provides that service of process may be made by service of three copies of the process on the Secretary of State, and such service shall be sufficient service upon the non-resident, provided that notice of such service and a copy of the process are forthwith sent by

registered mail by the Secretary of State to the defendant, at his last known address, which shall be stated in the affidavit of the plaintiff, said matter so mailed shall be marked "Deliver to Addressee Only" and "Return Receipt Requested," and provided further that such return receipt shall be received by the Secretary of State purporting to have been signed by the said non-resident.

It is further provided in the Act that any party desiring to obtain service under the Act shall make and file in the cause an affidavit stating facts showing that this Act is applicable.

A mere reading of the above Act demonstrates the sufficiency of the provisions for notice to the non-resident defendant, and that service under the provisions of the Act fully meet the requirements of due process.

Counsel for appellant argues however that the service attempted under Act 282, supra, is defective in two aspects. First, that the affidavit accompanying the complaint is conclusionary and does not show facts bringing the Act into operation, and second, that the Act complained of did not accrue from acts done in Alabama.

[fol. 2208] The affidavit filed by the plaintiff avers that the defendant " * * * has actually done and is doing business or performing work or services in the State of Alabama; that this cause of action has arisen out of the doing of such business or as an incident thereof by said defendant in the State of Alabama."

The affidavit does state facts essential to the invocation of Act 282, supra. We do not think the legislative purpose in requiring the affidavit was to require a detailed quo modo of the business done, but rather was to furnish the Secretary of State with information sufficient upon which to perform the duties imposed upon that official. The ultimate determination of whether the non-resident has done business or performed work or services in this State, and whether the cause of action accrues from such acts, is judicial, and not ministerial, as demonstrated by appellant's motion to quash.

As to appellant's second contention that the cause did not accrue from any acts of The Times in Alabama, it is our conclusion that this contention is without merit.

Equally applicable to newspaper publishing are the observations made in *Consolidated Cosmetics* v. *D-A Pub. Co., Inc., et al.*, 186 F. 2d 906 at 908, relative to the functions of a magazine publishing company:

> "The functions of a magazine publishing company, obviously, include gathering material to be printed, obtaining advertisers and subscribers, printing, selling and delivering the magazines for sale. Each of these, [fol. 2209] we think, constitutes an essential factor of the magazine publication business. Consequently if a non-resident corporation sees fit to perform any one of those essential functions in a given jurisdiction, it necessarily follows that it is conducting its activities in such a manner as to be subject to jurisdiction."

It is clear under our decisions that when a non-resident prints a libel beyond the boundaries of the State, and distributes and publishes the libel in Alabama, a cause of action arises in Alabama, as well as in the State of the printing or publishing of the libel. *Johnson Publishing Co.* v. *Davis*, 271 Ala. 474, 124 So. 2d 441; *Weir* v. *Brotherhood of Railroad Trainmen*, 221 Ala. 494, 129 So. 267; *Bridwell* v. *Brotherhood of Railroad Trainmen*, 227 Ala. 443, 150 So. 338; *Collins* v. *Brotherhood of Railroad Trainmen*, 226 Ala. 659, 148 So. 133.

The scope of substituted service is as broad as the permissible limits of due process. *Boyd* v. *Warren Paint & Color Co.*, 254 Ala. 687, 49 So. 2d 559; *Ex parte Emerson*, 270 Ala. 697, 121 So. 2d 914.

The evidence shows that The Times sent its papers into Alabama, with its carrier as its agent, freight prepaid, with title passing on delivery to the consignee. See Tit. 57, Sec. 25, Code of Alabama 1940; *2 Williston on Sales*, Sec. 279(b), p. 90. Thence the issue went to newsstands for sale to the public in Alabama, in accordance with a long standing business practice.

[fol. 2210] The Times or its wholly owned advertising subsidiary, on several occasions, had agents in Alabama for substantial periods of time soliciting, and procuring in substantial amounts advertising to appear in The Times.

Furthermore, upon the receipt of the letter from the plaintiff demanding a retraction of the matter appearing in the advertisement, The Times had its string correspondent in Montgomery, Mr. McKee, investigate the truthfulness of the assertions in the advertisement. The fact that McKee was not devoting his full time to the service of The Times is "without constitutional significance." *Scripto Inc.* v. *Carson, Sheriff, et al.*, 362 U.S. 207.

In *WSAZ, Inc.* v. *Lyons*, 254 F. 2d 242 (6th Cir.), the defendant television corporation was located in West Virginia. Its broadcasts covered several counties in Kentucky, and the defendant contracted for advertising in the Kentucky counties, all contracts for such advertising being sent to the corporation in West Virginia for acceptance.

The alleged libel sued upon occurred during a news broadcast.

Service was obtained by serving the Kentucky Secretary of State under the provisions of a Kentucky statute providing for such service upon a foreign corporation doing business in Kentucky where the action arose out of or was "connected" with the business done by such corporation in Kentucky.

In sustaining the judgment awarded the plaintiff, the court wrote in connection with the validity of the service to support the judgment:

> [fol. 2211] "All that is necessary here is that the cause of action asserted shall be 'connected' with the business done. Defendant asserts that the alleged libel has no connection with its business done in Kentucky. But in view of its admission that its usual business was the business of telecasting and that this included news programs, and in view of the undisputed fact that the alleged libel was part of news programs regularly broadcast by defendant, this contention has no merit.
>
> "The question of due process would seem to be settled by the case of *McGee* v. *International Life Insurance Co.* (citation), as well as by *International Shoe Co.* v. *State of Washington*, supra. While defendant was not present in the territory of the forum, it certainly had substantial contacts with it. It sought and

executed contracts for the sale of advertising service to be performed and actually performed by its own act within the territory of the forum. We conclude that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"

In the present case the evidence shows that the publishing of advertisements was a substantial part of the business of The Times, and its newspapers were regularly sent into Alabama. Advertising was solicited in Alabama. Its correspondent McKee was called upon by The Times to [fol. 2212] investigate the truthfulness or falsity of the matters contained in the advertisement after the letter from the plaintiff. The acts therefore disclose not only certain general conditions with reference to newspaper publishing, but also specific acts directly connected with, and directly incident to the business of The Times done in Alabama.

The service acquired under the provisions of Act No. 282, supra, was valid.

General Appearance by The Times

The trial court also found that The Times, by including as a ground of the prayer in its motion to quash, the following, "* * * that this court dismiss this action as to The New York Times Company, A Corporation, for lack of jurisdiction of the subject matter of said action * * *" did thereby go beyond the question of jurisdiction over the corporate person of The Times, and made a general appearance, thereby waiving any defects in service of process, and thus submitted its corporate person to the jurisdiction of the court.

The conclusions of the trial court in this aspect are in accord with the doctrines of a majority of our sister states, and the doctrines of our own decisions.

Pleadings based upon lack of jurisdiction of the person are in their nature pleas in abatement, and find no special favor in the law. They are purely dilatory and amount to no more than a declaration by a defendant that he is in court in a proper action, after actual notice, but because of a defect in service, he is not legally before the court. See *Olcese* v. *Justice's Court*, 156 Cal. 82, 103 P. 317.

[fol. 2213] In *Roberts* v. *Superior Court*, 30 Cal. App. 714, 159 P. 465, the court observed:

> "The motion to dismiss the complaint on the ground that the court was without jurisdiction of the subject-matter of the action amounted, substantially or in legal effect, to a demurrer to the complaint on that ground. At all events, a motion to dismiss on the ground of want of jurisdiction of the subject-matter of the action necessarily calls for relief which may be demanded only by a party to the record. It has been uniformly so held, as logically it could not otherwise be held, and, furthermore, that where a party appears and asks for such relief, although expressly characterizing his appearance as special and for the special purpose of objecting to the jurisdiction of the court over his person, he as effectually submits himself to the jurisdiction of the court as though he had legally been served with process."

The reason dicting such conclusion is stated by the Supreme Court of North Carolina, in *Dailey Motor Co.* v. *Reaves*, 184 N. C. 260, 114 S.E. 175, to be:

> "Any course that, in substance, is the equivalent of an effort by the defendants to try the matter and obtain a judgment on the merits, in any material aspect of the case, while standing just outside the threshold of the court, cannot be permitted to avail them. A party [fol. 2214] will not be allowed to occupy so ambiguous a position. He cannot deny the authority of the court to take cognizance of his action for want of jurisdiction of the person or proceeding, and at the same time seek a judgment in his favor on the ground that there is no jurisdiction of the cause of action.
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> * * * * * * *
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> "We might cite cases and authorities indefinitely to the same purpose and effect, but those to which we have briefly referred will suffice to show how firmly and unquestionably it is established, that it is not only dangerous, but fatal to couple with a demurrer, or

other form of objection based on the ground that the court does not have jurisdiction of the person, an objection in the form of a demurrer, answer, or otherwise, which substantially pleads to the merits, and, as we have seen, such an objection is presented when the defendant unites with his demurrer for lack of jurisdiction of the person a cause of demurrer for want of jurisdiction of the cause or subject of the action, and that is exactly what was done in this case."

We will not excerpt further from the decisions from other jurisdictions in accord with the doctrine of the above cases, but point out that innumerable authorities from a [fol. 2215] large number of states may be found set forth in an annotation to be found in 25 A.L.R. 2d, pages 838 through 842.

In *Thompson* v. *Wilson*, 224 Ala. 299, 140 So. 439, this court stated:

"If there was a general appearance made in this case, the lower court had jurisdiction of the person of the appellant. (Authorities cited.)

"The filing of a demurrer, unless based solely on the ground of lack of jurisdiction of the person, constitutes a general appearance."

Again, in *Blankenship* v. *Blankenship*, 263 Ala. 297, 82 So. 2d 335, the court reiterated the above doctrine.

Thus the doctrine of our cases is in accord with that of a majority of our sister states that despite an allegation in a special appearance that it is for the sole purpose of questioning the jurisdiction of the court, if matters going beyond the question of jurisdiction of the person are set forth, then the appearance is deemed general, and defects in the service are to be deemed waived.

We deem the lower court's conclusions correct, that The Times, by questioning the jurisdiction of the lower court over the subject matter of this suit, made a general appearance, and thereby submitted itself to the jurisdiction of the lower court.

Appellant's assignment No. 9 is to the effect that the lower court erred in overruling defendant's demurrers as [fol. 2216] last amended to plaintiff's complaint.

The defendant's demurrers contain a large number of grounds, and the argument of the appellant is directed toward the propositions that:

1. As a matter of law, the advertisement was not published of and concerning the plaintiff, as appears in the face of the complaint.

2. The publication was not libelous per se.

3. The complaint was defective in failing to allege special damages.

4. The complaint was defective in failing to allege facts or innuendo showing how plaintiff claimed the article had defamed him.

5. The complaint was bad because it stated two causes of action.

Both counts of the complaint aver among other things that "* * * defendants falsely and maliciously published in the City of New York, State of New York, and in the City of Montgomery, Alabama, and throughout the State of Alabama, of and concerning the plaintiff, in a paper entitled The New York Times, in the issue of March 29, 1960, on page 25, in an advertisement entitled 'Heed Their Rising Voices' (a copy of said advertisement being attached hereto and made a part hereof as Exhibit 'A'), false and defamatory matter or charges reflecting upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama, and imputing improper conduct to him, and subjecting him to public contempt, ridicule and shame, and prejudicing the plaintiff in his office, profession, trade or business, with an intent to [fol. 2217] defame the plaintiff, and particularly the following false and defamatory matter contained therein:

'In Montgomery, Alabama, after students sang "My Country 'Tis of Thee" on the State Capitol steps, their leaders were expelled from school, and truckloads of

police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.

. . . . . .

'Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for "speeding," "loitering," and similar "offenses." And now they have charged him with "perjury"—a *felony* under which they could imprison him for *ten years*.'"

Where the words published tend to injure a person libeled by them in his reputation, profession, trade or business, or charge him with an indictable offense, or tends to bring the individual into public contempt are libelous per se. *White* v. *Birmingham Post Co.*, 233 Ala. 547, 172 So. 649; *Iron Age Pub. Co.* v. *Crudup*, 85 Ala. 519, 5 So. 332. [fol. 2218] Further, "the publication is not to be measured by its effects when subjected to the critical analysis of a trained legal mind, but must be construed and determined by its natural and probable effect upon the mind of the average reader." *White* v. *Birmingham Post Co.*, supra.

We hold that the matter complained of is, under the above doctrine, libelous per se, if it was published of and concerning the plaintiff.

In "Dangerous Words—A Guide to the Law of Libel," by Philip Wittenberg, we find the following observations, at pages 227 and 228:

"There are groupings which may be finite enough so that a description of the body is a description of the members. Here the problem is merely one of evaluation. Is the description of the member implicit in the description of the body, or is there a possibility that a description of the body may consist of a variety of persons, those included within the charge, and those excluded from it?

. . . . . .

"The groupings in society today are innumerable and varied. Chances of recovery for libel of the members of such groups diminish with increasing size, and increase as the class or group decreases. Whenever a class decreases so that the individuals become obvious, they may recover for a libel descriptive of the group. In cases where the group is such that it is [fol. 2219] definite in number; where its composition is easily recognizable and the forms of its organization are apparent, then recognition of individuals libeled by group defamation becomes clear."

The same principle is aptly stated in *Gross* v. *Cantor*, 270 N.Y. 93, as follows:

"An action for defamation lies only in case the defendant has published the matter 'of and concerning the plaintiff.' . . . Consequently an impersonal reproach of an indeterminate class is not actionable . . . . 'But if the words may by any reasonable application, import a charge against several individuals, under some general description or general name, the plaintiff has the right to go on to trial, and it is for the jury to decide whether the charge has the personal application averred by the plaintiff.'

"We cannot go beyond the face of this complaint. It does not there appear that the publication was so scattered a generality or described so large a class as such that no one could have been personally injured by it. Perhaps the plaintiff will be able to satisfy a jury of the reality of his position that the article was directed at him as an individual and did not miss the mark."

[fol. 2220] And in *Wofford* v. *Meeks*, 129 Ala. 349, 30 So. 625, we find this court saying:

"Mr. Freeman, in his note to case of *Jones* v. *The State*, 70 Am. St. Rep. 756, after reviewing the cases, says: 'We apprehend the true rule is that, although the libelous publication is directed against a particular class of persons or a group, yet any one of that class

or group may maintain an action upon showing that the words apply especially to him.' And, further, he cites the cases approvingly which hold that each of the persons composing the class may maintain the action. We think this the correct doctrine, and it is certainly supported by the great weight of authority.—13 Am. & Eng. Ency. Law, 392 and note 1; *Hardy* v. *Williamson*, 86 Ga. 551; s.c. 22 Am. St. Rep. 479."

We judicially know that the City of Montgomery operates under a commission form of government. (See Act 20, Gen. Acts of Alabama 1931, page 30.) We further judicially know that under the provisions of Sec. 51, Tit. 37, Code of Alabama 1940, that under this form of municipal government the executive and administrative powers are distributed into departments of (1) public health and public safety, (2) streets, parks and public property and improvements, and, (3) accounts, finances, and public affairs; and that the assignments of the commissioners may be changed at any time by a majority of the board.

[fol. 2221] The appellant contends that the word "police" encompasses too broad a group to permit the conclusion that the statement in the advertisement was of and concerning the plaintiff since he was not mentioned by name.

We think it common knowledge that the average person knows that municipal agents, such as police and firemen, and others, are under the control and direction of the city governing body, and more particularly under the direction and control of a single commissioner. In measuring the performance or deficiencies of such groups, praise or criticism is usually attached to the official in complete control of the body. Such common knowledge and belief has its origin in established legal patterns as illustrated by Sec. 51, supra.

In *De Hoyos* v. *Thornton*, 259 N.Y. App. Div. 1, a resident of Monticello, New York, a town of 4000 population, had published in a local newspaper an article in which she stated that a proposed acquisition of certain property by the municipality was "another scheme to bleed the taxpayers and force more families to lose their homes. * * * It seems to me it might be better to relieve the tension on

the taxpayers right now and get ready for the golden age * * * and not be dictated to by gangsters and Chambers of Commerce."

The mayor and the three trustees of Monticello brought libel actions. The court originally considering the complaint dismissed the actions on the grounds that the plaintiffs were not mentioned in the article, and their connection with the municipality was not stated in the complaint. [fol. 2222] In reversing this decision the Appellate Division of the Supreme Court wrote: "There is no room for doubt as to who were the targets of her attack. Their identity is as clear to local readers from the article as if they were mentioned by name."

The court did not err in overruling the demurrer in the aspect that the libelous matter was not of and concerning the plaintiffs.

The advertisement being libelous per se, it was not necessary to allege special damages in the complaint. *Iron Age Pub. Co.* v. *Crudup*, 85 Ala. 519, 5 So. 332.

Where, as in this case, the matter published is libelous per se, then the complaint may be very simple and brief (*Penry* v. *Dozier*, 161 Ala. 292, 49 So. 909), and there is no need to set forth innuendo. *White* v. *Birmingham Post Co.*, 233 Ala. 547, 172 So. 649. Further, a complaint in all respects similar to the present was considered sufficient in our recent case of *Johnson Publishing Co.* v. *Davis*, 271 Ala. 474, 124 So. 2d 441.

The *Johnson* case, supra, is also to the effect that where a newspaper publishes a libel in New York, and by distribution of the paper further publishes the libel in Alabama, a cause of action arises in Alabama, as well as in New York, and that the doctrine of *Age-Herald Pub. Co.* v. *Huddleston*, 207 Ala. 40, 92 So. 193, concerned venue, and venue statutes do not apply to a foreign corporation not qualified to do business in Alabama.

In view of the principles above set forth, we hold that the lower court did not err in overruling the demurrer [fol. 2223] to the complaint in the aspects contended for and argued in appellant's brief.

Assignments of error Nos. 14, 15, 16 and 17, relate to the court's refusal to permit certain questions to be put to the venire in qualifying the jurors.

The appellant contends that The Times was unlawfully deprived of its right to question the jury venire to ascertain the existence of bias or prejudice. The trial court refused to allow four questions which were in effect, (1) Do you have any conviction, opinion or pre-disposition which would compel you to render a verdict against The Times? (2) Have any of you been plaintiffs in litigation in this court? (3) If there is no evidence of malice, would you refuse to punish The Times? (4) Is there any reason which would cause you to hesitate to return a verdict in favor of The Times?

The prospective jurors had already indicated that they were unacquainted with any of the facts in the case, that they had not discussed the case with anyone nor had it been discussed in their presence nor were they familiar in any manner with the contentions of the parties. Appellant was permitted to propound at some length other questions designed to determine whether there was any opinion or pre-disposition which would influence the juror's judgment. The jurors indicated that there was no reason whatsoever which would cause them to hesitate to return a verdict for The Times.

Sec. 52, Tit. 30, Code of Alabama 1940, gives the parties a broad right to interrogate jurors as to interest or bias. This right is limited by propriety and pertinence. It is [fol. 2224] exercised within the sound discretion of the trial court. We cannot say that this discretion has been abused where similar questions have already been answered by the prospective jurors. *Dyer* v. *State,* 241 Ala. 679, 4 So. 2d 311.

Only the second question could have conceivably revealed anything which was not already brought out by appellant's interrogation of the prospective jurors. Considering the completeness of the qualification and the remoteness of the second question, the exclusion of that inquiry by the trial court will not be regarded as an abuse of discretion. *Noah* v. *State,* 38 Ala. App. 531, 89 So. 2d 231.

Appellant contends that without the right to adequately question the prospective jurors, a defendant cannot adequately ensure that his case is being tried before a jury which meets the federal constitutional standards laid down

in such decisions as *Irvin* v. *Dowd*, 366 U.S. 717. It is sufficient to say that the jurors who tried this case were asked repeatedly, and in various forms, by counsel for The Times about their impartiality in every reasonable manner.

Appellant's assignment of error 306 pertains to the refusal of requested charge T. 22, which was affirmative in nature.

It is appellant's contention that refusal of said charge contravenes Amendment One of the United States Constitution and results in an improper restraint of freedom of the press, and further, that refusal of said charge is violative of the Fourteenth Amendment of the federal constitution.

[fol. 2225] In argument in support of this assignment, counsel for appellant asserts that the advertisement was only an appeal for support of King and "thousands of Southern Negro students" said to be "engaged in widespread non-violent demonstrations in positive affirmation of the right to live in human dignity as guaranteed by the U. S. Constitution and the Bill of Rights."

The fallacy of such argument is that it overlooks the libelous portions of the advertisement which are the very crux of this suit.

The First Amendment of the U. S. Constitution does not protect libelous publications. *Near* v. *Minnesota*, 283 U.S. 697; *Konigsberg* v. *State Bar of California*, 366 U.S. 36; *Times Film Corporation* v. *City of Chicago*, 365 U.S. 43; *Chaplinsky* v. *New Hampshire*, 315 U.S. 568; *Beauharnais* v. *Illinois*, 343 U.S. 250.

The Fourteenth Amendment is directed against State action and not private action. *Collins* v. *Hardyman*, 341 U.S. 651.

Assignment of error No. 306 is without merit.

Appellant's assignment of error No. 94 also pertains to the court's refusal of its requested charge T. 22.

Appellant's argument under this assignment asserts it was entitled to have charge T. 22 given because of the plaintiff's failure to plead or prove special damages.

In libel action, where the words are actionable per se, the complaint need not specify damages (*Johnson* v. *Robertson*, 8 Port. 486), nor is proof of pecuniary injury re-

quired, such injury being implied. *Johnson Publishing Co. v. Davis*, supra.

Assignments 18, 19, 21, 23, 25, 27, 30, and 32, relate to the action of the court in overruling defendant's objections [fol. 2226] to questions propounded to six witnesses presented by the plaintiff as to whether they associated the statements in the advertisement with the plaintiff. All of the witnesses answered such questions in such manner as to indicate that they did so associate the advertisement.

Without such evidence the plaintiff's cause would of necessity fall, for that the libel was of or concerning the plaintiff is the essence of plaintiff's claim.

Section 910 of Title 7, Code of Alabama 1940, pertaining to libel, among other things, provides that " * * * and if the allegation be denied, the plaintiff must prove, on the trial, the facts showing that the defamatory matter was published or spoken of him." This statute would seem to require the proof here admitted. And in *Wofford* v. *Meeks*, 129 Ala. 349, 30 So. 625, the court stated that where the libel is against a group, any one of that group may maintain an action "upon a showing that the words apply specially to him," and in *Chandler* v. *Birmingham News Co.*, 209 Ala. 208, 95 So. 886, this court said, "Any evidence which tended to show it was not 'of and concerning the plaintiff' was material and relevant to the issue."

In *Hope* v. *Hearst Consolidated Publications*, (2nd Cir. 1961), 294 Fed. 2d 681, the court said as to the admissibility of testimony that a witness believed the defamatory matter referred to the plaintiff:

> "In this regard it appears that the New York exclusionary rule represents a distinct, if not a lone, minority voice. The vast majority of reported cases, from both American and British courts, espouse the admission of such evidence; the text writers similarly advocate its admissibility.
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> • • • • • • •
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> [fol. 2227] "The plaintiff as a necessary element in obtaining relief, would have to prove that the coercive lies were understood by customers, to be aimed at him. In cases where the plaintiff was not specifically named, the exact issue now before us would be presented."

In accord with the doctrine that the instant evidence was admissible may be cited, among other authorities *Marr* v. *Putnam Oil Co.*, (Or.), 246 P. 2d 509; *Red River Valley Pub. Co., Inc.* v. *Bridges*, (Tex. Civ. Ap.) 254 S.W. 2d 854; *Colbert* v. *Journal Pub. Co.* (N.M.) 142 P. 146; *Prosser* v. *Callis et al.* (Ind.) 19 N.E. 735; *Martin County Bank* v. *Day* (Minn.) 75 N.W. 1115; *Ball* v. *Evening American Pub. Co.* (Ill.) 86 N.E. 1097; *Children* v. *Shinn* (Iowa) 150 N.W. 864.

Appellant's assignments of error 22, 26, 28, 31, 33, and 34, relate to the action of the court in overruling objections to certain questions propounded to plaintiff's witnesses Blackwell, Kaminsky, Price, Parker, and White, which questions were to the effect that if the witnesses believed the matter contained in the advertisement, would they have thought less of the plaintiff.

Counsel for appellant argues that the questions " • • • inescapably carried the implication that the witness thought the ad was published of and concerning the plaintiff." Each and every one of the above named witnesses had testified previous to the instant questions, that they had associated the City Commissioners, or the plaintiff, with the advertisement upon reading it. The questions were therefore based upon the witnesses' testimony that they associated the advertisement with the plaintiff, and not merely an implication that might be read into the question. [fol. 2228] Counsel further argues that the question is hypothetical in that none of the witnesses testified they believed the advertisement, or that they thought less of the plaintiff.

While we think such evidence of small probative value, yet it would have relevancy not only as to its effect upon the recipient, but also as to the effect such publication may reasonably have had upon other recipients. See "Defamation," 69 Harv. L. R., 877, at 884.

This aside, we cannot see that the answers elicited were probably injurious to the substantial rights of the appellant. Sup. Court Rule 45. Proof of common knowledge is without injury, though it be unnecessary to offer such proof.

Clearly we think it common knowledge that publication of matter libelous per se would, if believed, lessen the per-

son concerned in the eyes of any recipient of the libel. See *Tidmore* v. *Mills*, 33 Ala. App. 243, 32 So. 2d 769, and cases cited therein.

Assignment of error No. 63 asserts error arising out of the following instance during the cross-examination of Gershon Aronson, a witness for The Times, which matter, as shown by the record, had been preceded by numerous objections, and considerable colloquy between counsel and court:

"Q. Would you state now sir, what that word means to you; whether it has only a time meaning or whether it also to your eye and mind has a cause and effect meaning?

"Mr. Embry: Now, we object to that, Your Honor. That's a question for the jury to determine—

[fol. 2229] "The Court: Well, of course, it probably will be a question for the jury, but this gentleman here is a very high official of The Times and I should think he can testify—

"Mr. Daly: I object to that, Your Honor. He isn't a high official of The Times at all—

"Mr. Embry: He is just a man that has a routine job there, Your Honor. He is not—

"The Court: Let me give you an exception to the Court's ruling.

"Mr. Embry: We except."

We do not think it can be fairly said that the record discloses a ruling by the trial court on counsel's objection to the use of the term "very high official." The ruling made by the court is palpably to the question to which the objection was interposed. Counsel interrupted the court to object to the term "very high official," and second counsel added, "He is just a man that has a routine job there, Your Honor." Apparently this explanation satisfied counsel, as the court's use of the term was not pursued to the extent of obtaining a ruling upon this aspect, and the court's ruling was upon the first, and main objection.

Mr. Aronson testified that he had been with The Times for twenty-five years, and was Assistant Manager of the

Advertising Acceptability Department of The Times, and was familiar with the company's policies regarding advertising in all its aspects, that is, sales, acceptability, etc., and that advertisements of organizations and committees that express a point of view comes within the witness's particular duties.

[fol. 2230] In view of the above background of Mr. Aronson, and the state of the record immediately above referred to, we are unwilling to cast error upon the lower court in the instance brought forth under assignment No. 63.

Assignment of error No. 81 is to the effect that the lower court erred in denying appellant's motion for a new trial. Such an assignment is an indirect assignment of all of the grounds of the motion for a new trial which appellant sees fit to bring forward and specify as error in his brief.

The appellant under this assignment has sought to argue several grounds of its motion for a new trial.

Counsel, in this connection, seeks to cast error on the lower court because of an alleged prejudicial statement made by counsel for the appellee in his argument to the jury.

The record fails to show any objections were interposed to any argument by counsel for any of the litigants during the trial. There is therefore nothing presented to us for review in this regard. *Woodward Iron Co.* v. *Earley*, 247 Ala. 556, 25 So. 2d 267, and cases therein cited.

Counsel also argues two additional grounds contained in the motion for a new trial, (1) that the appellant was deprived of due process in the trial below because of hostile articles in Montgomery newspapers, and (2) because of the presence of photographers in the courtroom and the publication of the names and pictures of the jury prior to the rendition of the verdict.

As to the first point, the appellant sought to introduce in the hearing on the motion for a new trial newspaper articles dated prior to, and during, the trial. The court refused to admit these articles.

[fol. 2231] At no time during the course of the trial below did the appellant suggest a continuance, or a change of venue, or that it did not have knowledge of said articles.

Likewise, at no time was any objection interposed to the presence of photographers in the courtroom.

Newly discovered evidence was not the basis of the motion for a new trial. This being so, the court was confined upon the hearing on the motion to matters contained in the record of the trial. *Thomason* v. *Silvey*, 123 Ala. 694, 26 So. 644; *Alabama Gas Co.* v. *Jones*, 244 Ala. 413, 13 So. 2d 873.

Assignment of error 78 pertains to an alleged error occurring in the court's oral charge.

In this connection the record shows the following:

"Mr. Embry: We except, your Honor. We except to the oral portions of Your Honor's Charge wherein Your Honor charged on libel per se. We object to that portion of Your Honor's Charge wherein Your Honor charged as follows: 'So, as I said, if you are reasonably satisfied from the evidence before you, considered in connection with the rules of law the Court has stated to you, you would come to consider the question of damages and, where as here, the Court has ruled the matter complained of proved to your reasonable satisfaction and aimed at the plaintiff in this case, [fol. 2232] is libelous per se then punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown.'

"The Court: Overruled and you have an exception."

Preceding the above exception the court had instructed the jury as follows:

"Now, as stated, the defendants say that the ad complained of does not name the plaintiff, Sullivan, by name and that the ad is not published of and concerning him. . . . The plaintiff, Sullivan, as a member of the group referred to must show by the evidence to your reasonable satisfaction that the words objected to were spoken of and concerning him. The reason for this being that while any one of a class or group may maintain an action because of alleged libelous words, he must show to the reasonable satisfaction of the

jury that the words he complained of apply especially to him or are published of and concerning him.

* * * * * * *

"So, at the very outset of your deliberations you come to this question: Were the words complained of in counts 1 and 2 of this complaint spoken of and concerning the plaintiff, Sullivan? That's the burden he [fol. 2233] has. He must show that to your reasonable satisfaction and if the evidence in this case does not reasonably satisfy you that the words published were spoken of or concerning Sullivan or that they related to him, why then of course he would not be entitled to any damages and you would not go any further."

In addition the court gave some eleven written charges at defendant's request, instructing the jury in substance that the burden was upon the plaintiff to establish to the reasonable satisfaction of the jury that the advertisement in question was of and concerning the plaintiff, and that without such proof the plaintiff could not recover.

It is to be noted that in the portion of the complained of instructions excerpted above, the court first cautioned the jury they were to consider the evidence in connection with the rules of law stated to them. The court had previously made it crystal clear that the jury were to determine to their reasonable satisfaction from the evidence that the words were spoken of and concerning the plaintiff.

Counsel for appellant contend that because of the words "and aimed at the plaintiff in this case," the instruction would be taken by the jury as a charge that the advertisement was of and concerning the plaintiff, and hence the instruction was invasive of the province of the jury.

Removed from the full context of the court's instructions the charge complained of, because of its inept mode of expression, might be criticized as confused and misleading. [fol. 2234] However, it is basic that a court's oral charge must be considered as a whole and the part excepted to should be considered in the light of the entire instruction. If as a whole the instructions state the law correctly, there is no reversible error even though a part of the instructions, if considered alone, might be erroneous.

Innumerable authorities enunciating the above doctrines may be found in 18 Ala. Dig., Trial, Key Nos. 295(1) through 295(11).

Specifically, in reference to portions of oral instructions that might be criticized because tending to be invasive of the province of the jury, we find the following stated in 98 C.J.S., Trial, Sec. 438, the text being amply supported by citations:

> "A charge which, taken as a whole, correctly submits the issues to the jury will not be held objectionable because certain instructions taken in their severalty, may be subject to criticism on the ground they invade the province of the jury, * * * ."

To this same effect, see *Abercrombie* v. *Martin and Hoyt Co.*, 227 Ala. 510, 150 So. 497; *Choctaw Coal and Mining Co.* v. *Dodd*, 201 Ala. 622, 79 So. 54.

We have carefully read the court's entire oral instruction to the jury. It is a fair, accurate, and clear expression of the governing legal principles. In light of the entire charge we consider that the portion of the charge complained of to be inconsequential, and unlikely to have af- [fol. 2235] fected the jury's conclusions. We do not consider it probable that this appellant was injured in any substantial right by this alleged misleading instruction in view of the court's repeated and clear exposition of the principles involved, and the numerous written charges given at defendant's request further correctly instructing the jury in the premises.

The individual appellants, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery have also filed briefs and arguments in their respective appeals. Many of the assignments of error in these individual appeals are governed by our discussion of the principles relating to the appeal of The Times. We therefore will now confine our review in the individual appeals to those assignments that may present questions not already covered.

In their assignment of error No. 41, the individual appellants assert that the lower court erred in its oral instructions as to ratification of the use of their names in the publication of the advertisement. The instructions of the court in this regard run for a half a page or better. The record shows that an exception was attempted in the following language:

> "Lawyer Gray: Your Honor, we except to the Court's charge dealing with ratification as well as the Court's charge in connection with the advertisement being libelous per se in behalf of each of the individual defendants."

[fol. 2236] The above attempted exception was descriptive of the subject matter only, and is too indefinite to invite our review. *Birmingham Ry. Light and Power Co.* v. *Friedman*, 187 Ala. 562, 65 So. 939; *Conway* v. *Robinson*, 216 Ala. 495, 113 So. 531; *Birmingham Ry. Light and Power Co.* v. *Jackson*, 198 Ala. 378, 73 So. 627.

The refusal of a large number of charges applicable only to the individual appellants are also made the bases of numerous assignments of error. We have read all such refused charges, and each and every one is faulty.

Several of the charges instruct the jury that if the jury "find" etc., while others use the term "find from the evidence." These charges were refused without error in that the predicate for the jury's determination in a civil suit is "reasonably satisfied from the evidence." A court cannot be reversed for its refusal of charges which are not expressed in the exact and appropriate terms of the law. *W. P. Brown and Sons Lumber Co.* v. *Rattray*, 238 Ala. 406, 192 So. 851.

Others of the refused charges, not affirmative in nature, are posited on "belief," or "belief from the evidence." A judgment will not be reversed or affirmed because of the refusal, or giving, of "belief" charges. *Sovereign Camp, W.O.W.* v. *Sirten*, 234 Ala. 421, 175 So. 539; *Pan American Petroleum Co.* v. *Byars*, 228 Ala. 372, 153 So. 616; *Casino Restaurant* v. *McWhorter*, 35 Ala. App. 332, 46 So. 2d 582.

[fol. 2237] Specification of error number 6 asserts error in the court's action in refusing to sustain the individual

defendant's objection to the way one of the plaintiff's counsel pronounced the word "negro." When this objection was interposed, the court instructed plaintiff's counsel to "read it just like it is," and counsel replied, "I have been pronouncing it that way all my life." The court then instructed counsel to proceed. No further objections were interposed, nor exceptions reserved.

We consider this assignment mere quibbling, and certainly nothing is presented for our review in the state of the record.

Counsel have also argued assignments to the effect that error infects this record because, (1) the courtroom was segregated during the trial below, and (2) the trial judge was not duly and legally elected because of alleged deprivation of voting rights to negroes.

Neither of the above matters were presented in the trial below, and cannot now be presented for review.

Counsel further argues that the appellants were deprived of a fair trial in that the trial judge was, by virtue of Local Act No. 118, 1939 Local Acts of Alabama, p. 66, a member of the jury commission of Montgomery County. This act is constitutional. *Reeves* v. *State*, 260 Ala. 66, 68 So. 2d 14.

Without intimating that any merit attaches to this contention, it is sufficient to point out that this point was not raised in the trial below, and must be considered as having [fol. 2238] been waived. *De Moville* v. *Merchants & Farmers Bank of Greene County*, 237 Ala. 347, 186 So. 704.

Assignments 42, 121, 122, assert error in the court's refusal to hear the individual appellant's motions for new trials, and reference in brief is made to pages 2058-2105 of the record in this connection.

These pages of the record merely show that the individual appellants filed and presented to the court their respective motions for a new trial on 2 December 1960, and the same were continued until 16 December 1960. On 16 December 1960, the respective motions were continued to 14 January 1961. No further orders in reference to the motions of the individual appellants appear in the record, and no judgment on any of the motions of the individual appellants appears in the record.

The motions of the individual appellants therefore become discontinued after 14 January 1961.

There being no judgments on the motion for a new trial of the individual appellants, and they having become discontinued, those assignments by the individual appellants attempting to raise questions as to the weight of the evidence, and the excessiveness of the damages are ineffective and present nothing for review. Such matters can be presented only by a motion for a new trial. See 2 Ala. Dig., Appeal and Error, Key Nos. 294(1) and 295, for innumerable authorities.

Other matters are argued in the briefs of the individual appellants. We conclude they are without merit and do not invite discussion, though we observe that some of the matters attempted to be brought forward are insufficiently presented to warrant review.

[fol. 2239] Evidence on the merits

The plaintiff first introduced the depositorial testimony of Harding Bancroft, secretary of The Times.

Mr. Bancroft thus testified that one John Murray brought the original of the advertisement to The Times where it was delivered to Gershon Aronson, an employee of The Times. A Thermo-fax copy of the advertisement was turned over to Vincent Redding, manager of the advertising department, and Redding approved it for insertion in The Times. The actual insertion was done pursuant to an advertising insertion order issued by the Union Advertising Service of New York City.

Redding determined that the advertisement was endorsed by a large number of people whose reputation for truth he considered good.

Numerous news stories from its correspondents, published in The Times, relating to certain events which formed the basis of the advertisement and which had been published from time to time in The Times were identified. These news stories were later introduced in evidence as exhibits.

Also introduced through this witness was a letter from A. Philip Randolph certifying that the four individual defendants had all given permission to use their names in furthering the work of the "Committee to Defend Martin Luther King and the Struggle for Freedom in the South."

Mr. Bancroft further testified that The Times received a letter from the plaintiff dated 7 April 1960, demanding a retraction of the advertisement. They replied by letter [fol. 2240] dated 15 April 1960, in which they asked Mr. Sullivan what statements in the advertisement reflected on him.

After the receipt of the letter from the plaintiff, The Times had McKee, its "string" correspondent in Montgomery, and Sitton, its staff correspondent in Atlanta, investigate the truthfulness of the allegations in the advertisement. Their lengthy telegraphic reports, introduced in evidence showed that the Alabama College officials had informed them that the statement that the dining room at the College had been padlocked to starve the students into submission was absolutely false; that all but 28 of the 1900 students had re-registered and meal service was furnished all students on the campus and was available even to those who had not registered, upon payment for the meals; that the Montgomery police entered the campus upon request of the College officials, and then only after a mob of rowdy students had threatened the negro college custodian, and after a college policeman had fired his pistol in the air several times in an effort to control the mob. The city policy had merely tried to see that the orders of the Alabama College officials were not violated.

Sitton's report contained the following pertinent statements:

"• • • Paragraph 3 of the advertisement, which begins, 'In Montgomery, Alabama, after students sang' and so forth, appears to be virtually without any foundation. The students sang the National Anthem. Never at any time did policy 'ring' the campus although [fol. 2241] on three occasions they were deployed near the campus in large numbers. Probably a majority of the student body was at one time or another involved in the protest but not the 'entire student body.' I have been unable to find anyone who has heard that the campus dining room was padlocked. • • • In reference to the 6th paragraph, beginning: 'Again and

"again the Southern violators' and so forth, Dr. King's home was bombed during the bus boycott some four years ago. His wife and child were there but were not (repeat not) injured in any way. King says that the only assault against his person took place when he was arrested some four years ago for loitering outside a courtroom. The arresting officer twisted King's arm behind the minister's back in taking him to be booked. * * * .'"

These reports further show that King had been arrested only twice by the Montgomery police. Once for speeding on which charge he was convicted and paid a $10.00 fine, and once for "loitering" on which charge he was convicted and fined $14.00, this fine being paid by the then police commissioner whom the plaintiff succeeded in office.

Mr. Bancroft further testified that upon receipt of a letter from John Patterson, Governor of Alabama, The Times retracted the advertisement as to Patterson, although in The Times' judgment no statement in the advertisement referred to John Patterson either personally or as Governor of Alabama. However, The Times felt that [fol. 2242] since Patterson held the high office of Governor of Alabama and believed that he had been libeled, they should apologize.

Grover C. Hall, Jr., Arnold D. Blackwell, William H. MacDonald, Harry W. Kaminsky, H. M. Price, Sr., William M. Parker, Jr., and Horace W. White, all residents of the city of Montgomery, as well as the plaintiff, testified over the defendant's objections that upon reading the advertisement they associated it with the plaintiff, who was Police Commissioner.

E. Y. Lacy, Lieutenant of detectives for the city of Montgomery, testified that he had investigated the bombings of King's home in 1955. This was before the plaintiff assumed office as Commissioner of Police. One bomb failed to explode, and was dismantled by Lacy. In attempting to apprehend the bombers, "The Police Department did extensive research work with overtime and extra personnel and we did everything that we knew including inviting and working with other departments throughout the country."

O. M. Strickland, a police officer of the city of Montgomery, testified that he had arrested King on the loitering charge after King had attempted to force his way into an already overcrowded courtroom, Strickland having been instructed not to admit any additional persons to the courtroom unless they had been subpoenaed as a witness. At no time did he nor anyone else assault King in any manner, and King was permitted to make his own bond and was released.

[fol. 2243] In his own behalf the plaintiff, Sullivan, testified that he first read the advertisement in the Mayor's office in Montgomery. He testified that he took office as a Commissioner of the City of Montgomery in October 1959, and had occupied that position since. Mr. Sullivan testified that upon reading the advertisement he associated it with himself, and in response to a question on cross-examination, stated that he felt that he had been greatly injured by it.

Mr. Sullivan gave further testimony as to the falsity of the assertions contained in the advertisement.

For the defense, Gershon Aronson, testified that the advertisement was brought to him by John Murray and he only scanned it hurriedly before the advertisement was sent to the Advertising Acceptability Department of The New York Times. As to whether the word "they" as used in the paragraph of the advertisement charging that "Southern violators" had bombed King's home, assaulted his person, arrested him seven times, etc., referred to the same people as "they" in the paragraph wherein it was alleged that the Alabama College students were padlocked out of their dining room in an attempt to starve them into submission and that the campus was ringed with police, armed with shotguns, tear gas, etc., Aronson first stated, "Well, it may have referred to the same people. It is rather difficult to tell" and a short while later Aronson stated, "Well, I think now it probably refers to the same people."

The Times was paid in the vicinity of $4,800 for publishing the advertisement.

[fol. 2244] D. Vincent Redding, assistant to the manager of the Advertising Acceptability Department of The Times, testified that he examined the advertisement and approved

it, seeing nothing in it to cause him to believe it was false, and further he placed reliance upon the endorsers "whose reputations I had no reason to question." On cross-examination Mr. Redding testified he had not checked with any of the endorsers as to their familiarity with the events in Montgomery to determine the accuracy of their statements, nor could he say whether he had read any news accounts concerning such events which had been published in The Times. The following is an excerpt from Mr. Redding's cross-examination:

> "Q. Now, Mr. Redding, wouldn't it be a fair statement to say that you really didn't check this ad at all for accuracy?
>
> "A. That's a fair statement, yes."

Mr. Harding Bancroft, Secretary of The Times, whose testimony taken by deposition had been introduced by the plaintiff, testified in the trial below as a witness for the defendants. His testimony is substantially in accord with that given in his deposition and we see no purpose in an additional delineation of it.

As a witness for the defense, John Murray testified that he was a writer living in New York City. He was a volunteer worker for the "Committee to Defend Martin Luther King," etc., and as such was called upon, together with two other writers, to draft the advertisement in question. [fol. 2245] These three were given material by Bayard Rustin, the Executive Director of the Committee, as a basis for composing the advertisement. Murray stated that Rustin is a professional organizer, he guessed along the line of raising funds. Murray knew that Rustin had been affiliated with the War Resisters League, among others.

After the first proof of the advertisement was ready, Rustin called him to his office and stated he was dissatisfied with it as it did not have the kind of appeal it should have if it was to get the response in funds the Committee needed.

Rustin then stated they could add the names of the individual defendants since by virtue of their membership in the Southern Christian Leadership Conference, which

supported the work of the Committee, he felt they need not consult them.

The individual defendants' names were then placed on the advertisement under the legend "We in the South who are struggling daily for dignity and freedom warmly endorse this appeal."

Murray further testified that he and Rustin rewrote the advertisement "to get money" and "to project the ad in the most appealing form from the material we were getting."

As to the accuracy of the advertisement, Murray testified:

> "Well, that did not enter the—it did not enter into consideration at all except we took it for granted that it was accurate—we took it for granted that it was accurate—they were accurate—and if they hadn't been [fol. 2246] —I mean we would have stopped to question it—I mean we would have stopped to question it. We had every reason to believe it."

The individual defendants all testified to the effect that they had not authorized The New York Times, Philip Randolph, the "Committee to Defend Martin Luther King," etc., nor any other person to place their names on the advertisement, and in fact did not see the contents of the advertisement until receipt of the letter from the plaintiff.

They all testified that after receiving the letter demanding a retraction of the advertisement they had not replied thereto, nor had they contacted any person or group concerning the advertisement or its retraction.

Amount of Damages

Under assignment of error No. 81, The Times argues those grounds of its motion for a new trial asserting that the damages awarded the plaintiff are excessive, and the result of bias, passion, and prejudice.

In *Johnson Publishing Co.* v. *Davis,* supra, Justice Stakely in a rather definitive discussion of a court's approach to the question of the amount of damages awarded in libel actions made the following observations:

"* * * The punishment by way of damages is intended not alone to punish the wrongdoer, but as a deterrent to others similarly minded. Liberty National Life Insurance Co. v. Weldon, supra; Advertiser Co. v. Jones, supra; Webb v. Gray, 181 Ala. 408, 62 So. 194. [fol. 2247] "Where words are libelous per se and as heretofore stated we think the published words in the present case were libelous per se, the right to damages results as a consequence, because there is a tendency of such libel to injure the person libeled in his reputation, profession, trade or business, and proof of such pecuniary injury is not required, such injury being implied. Advertiser Co. v. Jones, supra; Webb v. Gray, supra; Brown v. Publishers: George Knapp & Co., 213 Mo. 655, 112 S.W. 474; Maytag Co. v. Meadows Mfg. Co., 7 Cir., 45 F. 2d 299.

"Because damages are presumed from the circulation of a publication which is libelous per se, it is not necessary that there be any correlation between the actual and punitive damages. Advertiser Co. v. Jones, supra; Webb v. Gray, supra; Whitcomb v. Hearst Corp., 329 Mass. 193, 107 N.E. 2d 295.

"The extent of the circulation of the libel is a proper matter for consideration by the jury in assessing plaintiff's damages. Foerster v. Ridder, Sup., 57 N.Y.S. 2d 668; Whitcomb v. Hearst Corp., supra.

* * * * * * *

"In Webb v. Gray, supra [181 Ala. 408, 62 So. 196], this court made it clear that a different rule for dam- [fol. 2248] ages is applicable in libel than in malicious prosecution cases and other ordinary tort cases. In this case the court stated in effect that in libel cases actual damages are presumed if the statement is libelous per se and accordingly no actual damages need be proved.

* * * * * * *

"In Advertiser Co. v. Jones, supra, this Court considered in a libel case the claim that the damages were excessive and stated: 'While the damages are large in this case we cannot say that they were excessive. There was evidence from which the jury might infer malice,

and upon which they might award punitive damages. This being true, neither the law nor the evidence furnishes us any standard by which we can ascertain certainly that they were excessive. The trial court heard all of this evidence, saw the witnesses, observed their expression and demeanor, and hence was in a better position to judge of the extent of punishment which the evidence warranted than we are, who must form our conclusions upon the mere narrative of the transcript. This court, in treating of excessive verdicts in cases in which punitive damages could be awarded, through Justice Haralson spoke and quoted as follows: "There is no legal measure of damages in cases of this character."'

[fol. 2249]

* * * * * * *

"The Supreme Court of Missouri considered the question in Brown v. Publishers: George Knapp & Co., 213 Mo. 655, 112 S.W. 474, 485, and said: 'The action for libel is one to recover damages for injury to man's reputation and good name. It is not necessary, in order to recover general damages for words which are actionable per se, that the plaintiff should have suffered any actual or constructive pecuniary loss. In such action, the plaintiff is entitled to recover as general damages for the injury to his feelings which the libel of the defendant has caused and the mental anguish or suffering which he had endured as a consequence thereof. *So many considerations enter into the awarding of damages by a jury in a libel case that the courts approach the question of the excessiveness of a verdict in such case with great reluctance.* The question of damages for a tort especially in a case of libel or slander is peculiarly within the province of the jury, and unless the damages are so unconscionable as to impress the court with its injustice, and thereby to induce the court to believe the jury were actuated by prejudice, partiality, or corruption, it rarely interferes with the verdict.'" (Emphasis supplied.)

[fol. 2250] In the present case the evidence shows that the advertisement in question was first written by a professional organizer of drives, and rewritten, or "revved up" to make it more "appealing." The Times in its own files had articles already published which would have demonstrated the falsity of the allegations in the advertisement. Upon demand by the Governor of Alabama, The Times published a retraction of the advertisement insofar as the Governor of Alabama was concerned. Upon receipt of the letter from the plaintiff demanding a retraction of the allegations in the advertisement, The Times had investigations made by a staff correspondent, and by its "string" correspondent. Both made a report demonstrating the falsity of the allegations. Even in the face of these reports, The Times adamantly refused to right the wrong it knew it had done the plaintiff. In the trial below none of the defendants questioned the falsity of the allegations in the advertisement.

On the other hand, during his testimony it was the contention of the Secretary of The Times that the advertisement was "substantially correct." In the face of this cavalier ignoring of the falsity of the advertisement, the jury could not have but been impressed with the bad faith of The Times, and its maliciousness inferable therefrom.

While in the *Johnson Publishing Co.* case, supra, the damages were reduced by way of requiring a remittitur, such reduction was on the basis that there was some element of truth in part of the alleged libelous statement. No such reason to mitigate the damages is present in this case. [fol. 2251] It is common knowledge that as of today the dollar is worth only 50 cents or less of its former value.

The Times retracted the advertisement as to Governor Patterson, but ignored this plaintiff's demand for retraction. The matter contained in the advertisement was equally false as to both parties.

The Times would not justify its nonretraction as to this plaintiff by fallaciously asserting that the advertisement was substantially true, and further, that the advertisement as presented to The Times bore the names of endorsers whose reputation for truth it considered good.

The irresponsibility of these endorsers in attaching their names to this false and malicious advertisement cannot shield The Times from its irresponsibility in printing the advertisement and scattering it to the four winds.

All in all we do not feel justified in mitigating the damages awarded by the jury, and approved by the trial judge below, by its judgment on the motion for a new trial, with the favorable presumption which attends the correctness of the verdict of the jury where the trial judge refuses to grant a new trial. *Housing Authority of City of Decatur v. Decatur Land Co.*, 258 Ala. 607, 64 So. 2d 594.

[fol. 2252] In our considerations we have examined the case of *New York Times Company* v. *Conner*, (SCCA) 291 F. 2d 492 (1961), wherein the Circuit Court of Appeals for the Fifth Circuit, relying exclusively upon *Age Herald Publishing Co.* v. *Huddleston*, 207 Ala. 40, 92 So. 193, held that no cause of action for libel arose in Alabama where the alleged libel appeared in a newspaper primarily published in New York.

This case overlooks, or ignores, the decision of this court in *Johnson Publishing Co.* v. *Davis*, 271 Ala. 474, 124 So. 2d 441, wherein this court rejected the argument that the whole process of writing, editing, printing, transportation and distribution of a magazine should be regarded as one libel, and the locus of such libel was the place of primary publication. This court further, with crystal clarity, held that *Age Herald Publishing Co.* v. *Huddleston*, supra, concerned a venue statute, and that venue statutes do not apply to foreign corporations not qualified to do business in Alabama.

The statement of Alabama law in the *Conner* case, supra, is erroneous in light of our enunciation of what is the law of Alabama as set forth in the *Johnson Publishing Company* case, supra. This erroneous premise, as we interpret the *Conner* case, renders the opinion faulty, and of no persuasive authority in our present consideration.

> "The laws of the several states, except where the Constitution of treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts [fol. 2253] of the United States, in cases where they apply." Sec. 1652, Title 28, U.S.C.A., 62 Stat. 944.

It is our conclusion that the judgment below is due to be affirmed, and it is so ordered.

Affirmed.

Livingston, C. J., and Simpson and Merrill, JJ., concur.

[fol. 2254]

IN THE SUPREME COURT OF THE STATE OF ALABAMA

The Court Met in Special Session Pursuant to Adjournment

Present: All the Justices

MONTGOMERY CIRCUIT COURT

3rd Div. 961

THE NEW YORK TIMES COMPANY, a Corporation,

vs.

L. B. SULLIVAN.

JUDGMENT—August 30, 1962

Come the parties by attorneys and the record and matters therein assigned for errors being argued and submitted on motions and merits and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is no error.

It is Therefore Considered, Ordered and Adjudged that the judgment of the Circuit Court be in all things affirmed.

It is Further Considered, Ordered and Adjudged that the appellant, The New York Times Company, a Corporation, and St. Paul Fire and Marine Insurance Company, a Corporation, surety on the supersedeas bond, pay the amount of the judgment of the Circuit Court and ten per centum (10%) damages thereon and interest and the costs of appeal of this Court and of the Circuit Court.

And it appearing that said parties have waived their right of exemptions under the laws of Alabama, it was ordered that execution issue accordingly.

And it was further Ordered and Adjudged that the other appellants, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery, be also taxed with the costs of appeal of this Court and of the Circuit Court, for which costs let execution issue accordingly.

[fol. 2255] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF ALABAMA

Third Division No. 961

THE NEW YORK TIMES COMPANY, A Corporation, Appellant,

vs.

L. B. SULLIVAN, Appellee.

Appeal From Montgomery Circuit Court.

MOTION FOR STAY OF EXECUTION—Filed November 13, 1962

To the Honorable Supreme Court of the State of Alabama:

Comes now the Appellant, The New York Times Company, a Corporation, and shows unto the Court as follows:

1. This cause came to this Court on appeal from the Circuit Court of Montgomery County from a judgment of that said court against this Appellant and others in the amount of Five Hundred Thousand Dollars ($500,000.00).

2. At the time of taking the appeal from the judgment of the Circuit Court of Montgomery County this Appellant filed in said Circuit Court a supersedeas bond in the amount of One Million Five Hundred Dollars ($1,000,-500.00), which bond was executed by this Appellant as

principal and St. Paul Fire and Marine Insurance Company as surety.

3. On, to-wit, the 30th day of August, 1962, this Honorable Court rendered a judgment affirming the judgment of the Circuit Court of Montgomery County and rendering judgment against this Appellant and the surety on its bond in the amount of Five Hundred Thousand Dollars ($500,000.00), plus interest and ten percent (10%) penalty.

4. This Appellant will petition the Supreme Court of the United States for review of the judgment of this Honorable Court on writ of certiorari and desires a stay of execution of the judgment of this Honorable Court and of the Circuit Court of Montgomery County pending the final determination of the review by the Supreme Court of the United States.

5. Appellant has filed with the Clerk of this Honorable Court a bond executed by Appellant as principal and St. Paul Fire and Marine Insurance Company as surety whereby Appellant and surety are held and firmly bound unto [fol. 2256] L. B. Sullivan in the sum of Five Hundred Thousand Dollars ($500,000.00) plus ten percent (10%) penalty thereon with interest, the cost of appeal in the Supreme Court of Alabama and the Circuit Court of Montgomery County, and all damages and costs which L. B. Sullivan may sustain or has sustained by reason of the stay hereby petitioned for pending the final determination of a petition for certiorari to be filed in the United States Supreme Court by Appellant.

Wherefore Premises Considered this Appellant prays that this Honorable Court stay the execution of the judgment of this Honorable Court and the judgment of the Circuit Court of Montgomery County until such time as the Supreme Court of the United States denies this Appellant's petition for writ of certiorari or rules adversely to this Appellant upon review of the judgment of this Honorable Court on writ of certiorari, and until that said Court renders a decision on any application for rehearing that may be filed as a result of its said action in connection with the petition for writ of certiorari or until the time allowed by

law for filing a petition for writ of certiorari has expired and no petition for writ of certiorari has been filed.

Beddow, Embry & Beddow, By Roderick M. MacLeod, Jr., Attorneys for Appellant, The New York Times Company, a corporation.

STAY OF EXECUTION—November 13, 1962

Appellant, The New York Times Company, a corporation, having filed in this Court a petition for a stay of the execution of the judgment rendered by this Court on August 30, 1962 in order that it may seek a review of the judgment of this Court in the Supreme Court of the United States by a petition for writ of certiorari and the same having been duly examined and understood by this Court and this Court being of the opinion that the petition is due to be granted, it is hereby

Ordered and Adjudged that the judgment in this case be and the same is hereby stayed until such time as the Supreme Court of the United States denies this Appellant's petition for writ of certiorari or rules adversely to this Appellant upon review of the judgment of this Court on writ of certiorari and until that said court renders a decision on any application for rehearing that may be filed as a result of its said action in connection with the petition for writ of certiorari or until the time allowed by law for filing a petition for writ of certiorari has expired and no petition for writ of certiorari has been filed or until further orders of this Court.

[fol. 2257] Done and Ordered this 13 day of November, 1962.

J. Ed Livingston, C.J., Simpson, Merrill, Harwood, JJ., concur.

[fol. 2258]

IN THE SUPREME COURT OF THE STATE OF ALABAMA

(Letterhead of St. Paul Fire and Marine Insurance Company, Saint Paul, Minnesota)

[Stamp—Filed—Nov 13 1962—Supreme Court of Alabama —J. Render Thomas—Clerk]

WRIT OF CERTIORARI

UNITED STATES SUPREME COURT

KNOW ALL MEN BY THESE PRESENTS, that we, THE NEW YORK TIMES COMPANY, a corporation of the State of New York, as Principal, and ST. PAUL FIRE AND MARINE INSURANCE COMPANY, a corporation organized under the laws of the State of Minnesota, having its principal office in the City of St. Paul, State of Minnesota, and having an office and usual place of business in the Jackson Building, Birmingham 3, Alabama, as Surety, are held and firmly bound unto L. B. SULLIVAN in the sum of FIVE HUNDRED THOUSAND AND No/100 ($500,000.00) DOLLARS plus ten per cent damages thereon with interest, the costs of appeal in the Supreme Court of Alabama and the Circuit Court for Montgomery County, and all damages and costs which L. B. SULLIVAN may sustain or has sustained by reason of the stay agreed to and/or granted herein pending the final determination of a petition for certiorari to be filed by THE NEW YORK TIMES COMPANY, for the payment of which well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents, and as part of this undertaking we hereby waive all our rights under the Constitution and laws of the State of Alabama, to have any of our property, real or personal, exempt from levy and sale in satisfaction hereof.

SEALED WITH OUR SEALS AND DATED this 24th day of September, 1962.

WHEREAS, the Supreme Court of Alabama on August 30th, 1962 having affirmed a judgment of the Circuit Court in Montgomery County and having rendered judgment on August 30th, 1962 against the said Principal and Surety in the amount of FIVE HUNDRED THOUSAND AND No/100 ($500,000.00) DOLLARS, plus ten per cent penalty, plus interest and costs; and

WHEREAS, THE NEW YORK TIMES COMPANY, feeling aggrieved and injured by the said judgment of the Supreme Court of Alabama, is about to commence a proceeding in the Supreme Court of the United States of America for a Writ of Certiorari to review the determination of the Supreme Court of Alabama.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said THE NEW YORK TIMES COMPANY shall prosecute the said Writ to effect and satisfy any final judgment rendered against the said THE NEW YORK TIMES COMPANY, in this action, as the United States Supreme Court may render in the case, then the said obligation to be null and void, otherwise to remain in full force and effect.

THE NEW YORK TIMES COMPANY

By /s/ HARDING F. BANCROFT

[Seal]

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

By /s/ V. J. BORELLI
V. J. BORELLI, Attorney-in-Fact

[Seal]

Bond #431FH 6582

COUNTERSIGNED AT BIRMINGHAM, ALA.

By /s/ J. B. CHAPMAN
Resident Agent

11074a 2M Rev. 6/61

[Handwritten notation—Filed and approved this the 13 day of November 1962 J. Render Thomas Court Clerk of the Supreme Court of Ala.]

[fol. 2258a]

CORPORATION ACKNOWLEDGMENT

THE ST. PAUL
INSURANCE COMPANIES

(Emblem)

Serving you around the world . . . around the clock

State of New York
County of New York, *ss*:

On this 31st day of October, 1962, before me personally came Harding F. Bancroft to me known, who being by me duly sworn, did depose and say; that he resided in New York, N. Y. that he is the Secretary of The New York Times Company the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

/s/ ANNA M. JOHNSON, Notary Public
My commission expires _____

Anna M. Johnson,
Notary Public, State of N. Y.
No. 24-7091910
Qualified in Kings Co.
Cert. filed in New York Co.
Comm. expires March 30, 1964

[fol. 2258b]
State of New York
County of New York, *ss.*:

On this 24th day of September A.D., 1962, before me, the subscriber, a notary public duly commissioned and sworn, personally came V. J. Borelli who, being by me duly sworn, on his oath saith: that he is an Attorney-in-Fact of the

St. Paul Fire and Marine Insurance Company; that he resides in Brooklyn, New York, that he knows the corporate seal of said Company; that the seal affixed to the foregoing instrument is such corporate seal; that it was affixed by him the said Attorney-in-Fact, by order of the Board of Directors of said Company; and that deponent signed the foregoing instrument by like authority as the voluntary act and deed of said Company; that said Company has duly complied with all the requirements of Chapter No. 134 of the Laws of the State of New Jersey of the year 1902 and the amendments thereof and supplements thereto; that the good, available assets of the Company exceed its liabilities, as such liabilities are ascertained in the manner provided in said Chapter; that the St. Paul Fire and Marine Insurance Company is duly incorporated under the laws of the State of Minnesota, and is authorized by the laws of that State and under its charter to become surety on bonds and obligations such as are mentioned in said Chapter; that it has on deposit with the Treasurer of the State of Minnesota good securities worth at par and at market value at least Two Hundred Fifty Thousand Dollars ($250,000.00) held as security for all holders of its obligations, and has a fully paid up, safely invested and unimpaired capital of Twenty Million Dollars ($20,000,000.00); that said Company has appointed the Commissioner of Banking and Insurance of New Jersey and his successors in office as its true and lawful Attorney in the State of New Jersey upon whom process of law can be served, and has filed in the office of the Commissioner of Banking and Insurance a written instrument, duly signed and sealed, certifying such appointment.

/s/ GEORGE B. SLOANE, Notary Public.

George B. Sloane
Notary Public, State of New York
No. 24-9043670—Kings County
Cert. filed in New York County
Term Expires March 30, 1964

[fol. 2258c]

THE ST. PAUL
INSURANCE COMPANIES

(Emblem)

Serving you around the world . . . around the clock
385 WASHINGTON ST., ST. PAUL 2, MINN.

Financial Statement June 30, 1962
St. Paul Fire & Marine Insurance Company

ASSETS

Bonds		186,415,535.69
Stocks		162,745,114.32
Real Estate		11,694,484.74
Cash and Bank Deposits		7,208,679.49
Agents' Balances		28,772,665.74
Due from Reinsurance Cos. and Notes		2,398,455.59
Equity in Assets of Associations		4,729,641.52
Due from St. Paul Mercury Insurance Company		2,224,054.55
Accrued Interest		2,354,270.74
Other Assets		1,711,579.71
		410,254,482.09

LIABILITIES

Reserve for Unearned Premiums		111,616,162.89
Reserve for Unadjusted Losses		86,164,877.44
Reserve for Loss Adjustment Expenses		12,329,811.58
Reserve for Taxes and Expenses		4,425,187.77
Dividends Declared and Unpaid		1,490,262.84
Statutory Reserve Adjustments		5,814,345.09
Funds Held Under Reinsurance Treaties		3,589,132.44
Construction Loan		7,559,375.00
Other Liabilities		1,650,696.83
Special Reserve Fund		1,000,000.00
Capital Stock	25,870,231.25	
Voluntary Reserve	30,000,000.00	
Surplus	119,344,398.96	175,214,630.21
		410,254,482.09

Surplus to Policyholders $175,214,630.21

Securities carried at $7,715,202.00 in the foregoing statement are deposited as required by law.

State of Minnesota,
County of Ramsey, *ss*

W. E. King, Vice President of the St. Paul Fire and Marine Insurance Company, being duly sworn, deposes and says that he is the above described officer of said Company; that said Company is a corporation duly organized, existing and engaging in business as a surety company under and by virtue of the laws of the State of Minnesota, and has duly complied with all the requirements of the laws of said State applicable to said Company and is duly qualified to act as Surety under such laws; that the above is a true statement of the Assets and Liabilities of said Company on the 30th day of June, 1962.

/s/ W. E. King
W. E. King, Vice President

Subscribed and sworn to before me
this 7th day of August 1962

/s/ Geo. P. Leaf
Geo. P. Leaf

Notary Public, Ramsey County, Minnesota.
My Commission expires September 13, 1967.

[fol. 2258d]
State of New York,
County of New York, *ss.*:

On the 24th day of September in the year 1962, before me personally came V. J. Borelli, to me known, who, being by me duly sworn, did depose and say that he resides in Brooklyn, N. Y.; that he is the Attorney-in-Fact of the ST. PAUL FIRE AND MARINE INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his

name thereto by like order; and the affiant did further depose and say that the Superintendent of Insurance of the State of New York, has, pursuant to Section 327 of the Insurance Law of the State of New York, issued to ST. PAUL FIRE AND MARINE INSURANCE COMPANY his certificate of qualification, evidencing the qualification of said Company and its sufficiency under any law of the State of New York as surety and guarantor, and the propriety of accepting and approving it as such; and that such certificate has not been revoked.

/s/ GEORGE B. SLOANE
Notary Public

George B. Sloane
Notary Public, State of New York
No. 24-9043670—Kings County
Cert. filed in New York County
Term Expires March 30, 1964

[fol. 2258e]
Class 1 (A Capital Stock Company)

CERTIFIED COPY OF POWER OF ATTORNEY

Original on File at Home Office of Company.
See Certification.

FIDELITY AND SURETY
DEPARTMENT

ST. PAUL
FIRE and MARINE
Insurance Company
HOME OFFICE: ST. PAUL, MINNESOTA

Know All Men By These Presents: That the St. Paul Fire and Marine Insurance Company, a corporation organized and existing under the laws of the State of Minnesota, and having its principal office in the City of Saint Paul, Minnesota, does hereby constitute and appoint A. G. Pod-

Kesney, Stuart H. Richardson, W. C. Richardson, Gladys V. Stauder, Florence M. Boosman, Donald H. Rodimer, W. Robert Haslam, T. H. Caley, Alan J. Thompson and V. J. Borelli, individually of New York, New York its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be binding upon the said St. Paul Fire and Marine Insurance Company, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office.

This Power of Attorney is executed, and may be certified to and may be revoked, pursuant to and by authority of Article V,—Section 8, of the By-Laws adopted by the Board of Directors of the St. Paul Fire and Marine Insurance Company at a meeting called and held on the 17th day of January, 1952, of which the following is a true transcript of said Section 8:

"The President or any Vice President, Resident Vice President, Secretary or Resident Secretary, shall have the power and authority

(1) To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company; and attach the Seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and

(2) To appoint Special Attorneys-in-fact, who are hereby authorized to certify to copies of any power-of-attorney issued in pursuance of this section and/or any of the By-Laws of the Company, and

(3) To remove, at any time, any such Attorney-in-fact or Special Attorney-in-fact and revoke the authority given him."

In Testimony Whereof, the St. Paul Fire and Marine Insurance Company has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 17th day of August A.D. 1962

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

/s/ W. E. KING
Vice President.

(Corporate Seal)

State of Minnesota,
County of Ramsey, *ss.*

On this 17th day of August 1962, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said that he is the therein described and authorized officer of the St. Paul Fire and Marine Insurance Company; that the seal affixed to said instrument is the Corporate Seal of said Company; that the said Corporate Seal and his signature were duly affixed by order of the Board of Directors of said Company.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal, at the City of Saint Paul, Minnesota, the day and year first above written.

/s/ C. L. JAEGER
Notary Public, Ramsey County, Minn.
My Commission Expires June 2, 1967.

(Notarial Seal)

CERTIFICATION

I, the undersigned, a Special Attorney-in-fact of the St. Paul Fire and Marine Insurance Company, duly appointed pursuant to and by authority of the By-Laws of said Company, do hereby certify that I have compared the foregoing copy of the Power of Attorney* and affidavit, and the copy of the Section of the By-Laws of said Company as set forth in said Power of Attorney, with the Originals On File In The Home Office Of Said Company, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

In Testimony Whereof, I have hereunto set my hand this 24th day of September 1962.

/s/ R. A. PETRICKA
R. A. Petricka
Special Attorney-in-fact

*Unlimited as to character and amount.

[fol. 2259] Clerk's Certificate to foregoing transcript omitted in printing).

[fol. 2260]

SUPREME COURT OF THE UNITED STATES

No. 606, October Term, 1962

THE NEW YORK TIMES COMPANY, Petitioner,

vs.

L. B. SULLIVAN

ORDER ALLOWING CERTIORARI—January 7, 1963

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 2261]

SUPREME COURT OF THE UNITED STATES

No. 609, October Term, 1962

RALPH D. ABERNATHY, et al., Petitioners,

vs.

L. B. SULLIVAN

ORDER ALLOWING CERTIORARI—January 7, 1963

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted, and the case is set for argument immediately following No. 606.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA.

AT LAW.

Case No. 27416

L. B. SULLIVAN, Plaintiff,

vs.

THE NEW YORK TIMES COMPANY,
A Corporation, et als., Defendants.

EXHIBITS

Don Hollis
Montgomery Advertiser
Montgomery, Ala.

Name _____

Address _____

Town _____

APR 1960

State _____

MAIN 06573 DEPT 53 DIV 11

Month

TAX SH AMT

Correspondents	90	50 00
Suburban		
Brooklyn and Queens		
Sports		
Expenses — Corres.	90	
Expenses — Suburban		
Expenses — B & Q		
Expenses — Sports		
Total		50 00

1 50 AF

Audited _____

Checked _____

Plaintiff's Exhibit 1

564

[fol. 564]

PLAINTIFF'S EXHIBIT 1

1195

McKee - Montgomery
Allowance $25.00 for help given to
Salisbury on his swing thru South
for authorization see memo
4/18/60

Plaintiff's Exhibit 1

Mc Kee - Montgomery
allowance $25.00
for help given to Salisbury
on his swing thru South
for authorization see memo
4/18/60

Mc Kee - Montgomery
allowance $10.00
Alabama forming race-riot
posses
for authorization see memo
4/10/60 Plaintiff's Exhibit 1

McKee - Montgomery
Allowance $10.00
Alabama forming race-riot
posses
for authorization see memo
4/10/60

1196
[fol. 565]

allowed
2500 +
1000 +
3500

Plaintiff's Exhibit 1

John Chamblee
Room 505-Brooks Bldg.
South Magnolia
Birmingham, Ala.

Name _____

Address _____

Town _____

APR 1960

State _____

NAME Chamblee DEPT. 53 DIV. VI $

MISC. DUE 90 AMT. _____

Correspondents 98	1	00	0	0	0
Suburban					
Brooklyn and Queens					
Sports					
Expenses: Corres. 96					
Suburban					
B & Q					
Sports					
Total	1	00	0	0	0

$100.00

Audited _____

Checked _____

Plaintiff's Exhibit 2

[fol. 566]

PLAINTIFF'S EXHIBIT 21

Chadwick
allowance 10 00
Stadium fees +

Tel. Memo 5/6

Plaintiff's Exhibit 2

Chadwick - Birmingham
allowance $25.00
for help given to Salisbury
on his swing three days
for authorization see Memo 4/18

Plaintiff's Exhibit 2

7.00 +
8.85 +
words - 15.85 x
allow - 35.00
50.85

Plaintiff's Exhibit 2

[fol. 568]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 3

THE NEW YORK TIMES

National News Desk

RULES FOR CORRESPONDENTS

This is what we want:

1. Stories of more than local interest in fields such as inter-faith cooperation, public welfare, scientific advances, conservation, public power, education, etc. These stories may concern progress in these fields, retrogression or disputes.

2. Local stories which may contain a lesson for others—such as traffic advances, municipal taxation, major civic improvements, elections for city and state-wide offices, building of major bridges and tunnels, public housing, etc. These stories, too, may concern progress, or lack of it or disputes.

3. Anything not covered by the above instructions that you think readers of The New York Times would be interested in. If you have any doubts about what we want, query us.

Sunday stories:

1. We have a special interest in regional stories that cannot be fully explained in a brief daily story. These pieces may run as long as 500 to 700 words.

2. No such story should be sent in unless ordered. You may query by airmail or telephone as soon as you can—on Monday, if possible.

3. Stories so ordered must reach us not later than Wednesday, unless other arrangements are approved.

This is how we want stories:

1. Query us by telephone at Lackawanna 4-1000, National News Desk, on all spot stories as early as possible in the day, starting at 10:30 A. M. We will try to give you an immediate answer on what we want.

[fol. 569] 2. On time stories, we would like to be queried by airmail and we will answer as soon as we can. These are the type of stories that can be sent to us by airmail.

3. On spot stories, after receiving an order, file by telephone to our Recording Room, Lackawanna 4-4554, after 11 A. M. and before 6 P. M. On a really important story, of course, file to the Recording Room when you can.

4. All queries and files should be addressed to "National News Editor," New York Times, not to any individual by name.

Payment:

1. We pay for all stories ordered, whether or not used, if we ask for a picture, we will pay for that.

2. Our rates are a cent a word.

3. We require correspondents to file a bill at the end of each month to reach us not later than the 3rd. This will be checked against our clippings and checks will go out on or about the 10th of each month. We do not want a string; just a listing of the stories ordered with the wordage.

4. If you have any unusual expenses or if you do not think the wordage ordered covers your work on the story, a statement should be sent in together with your bill.

5. Bills and expense statements should be sent to me.

If you have any questions, either about payment or story ideas in general, please do not hesitate to write to me.

Sincerely,

/s/ HAROLD FABER
Harold Faber
Day National News Editor

John Chadwick
Room 505-Massey Bldg.
South Pagasino
Birmingham, Ala.

Name

Address

Town

State

JAN 1960

Phone

MAIN 02360 DEPT. 53 DIV. 11 x 9

Month TAX 98 AMT.

Correspondents	98		50.00
Suburban			
Brooklyn and Queens			
Sports			
Expenses: Corres.	96		1
Expenses: Suburban			
Expenses: B & Q			
Expenses: Sports			
Total			50.00

$5 HF

Audited

Checked

Plaintiff's Exhibit 4

570

[fol. 570]

PLAINTIFF'S EXHIBIT 4

1201

John Chadwick
Room 505-Massey Bldg.
South Magazine
Birmingham, Ala.

N... 10/19 51

A...

... March 1950

MAIN ... DEPT. ... DIV. ... 19

March

TAX 98 ART.

...ondents	98		5	0	0
Suburban					
Brooklyn and Queens					
Sports					
Expenses	Corres.	96			
	Suburban				
	B & Q.				
	Sports				
	Total		5	0	0

$50 HF

Audited

...0 *
...0 +
...0 +
12.5 0 *

allowance 25 ...
37.50

Plaintiff's Exhibit 5

[fol. 571]

1202

PLAINTIFF'S EXHIBIT 5

571

Don McKee
Montgomery Advertiser
Montgomery, Ala.

Name

Address

Town

State March 1960

Allow

TRAN #06523 DEPT 53 DIV 11 x 9
Month

TAX 98 AMT

Correspondents	98	3265
Suburban		
Brooklyn and Queens		
Sports		
Expenses: Corres.	96	235
Expenses: Suburban		
Expenses: B & Q		
Expenses: Sports		
Total		3500

436 HF

Audited

Checked

Plaintiff's Exhibit 6

512

[fol. 572]

PLAINTIFF'S EXHIBIT 6

1203

from DAY NATIONAL NEWS DESK

MEMORANDUM for: Mr. Hessler:

Please credit Don McKee of Montgomery, Ala.,
with $25.00 for profile of Commissioner L.B. Sullivan.
in March payroll

Faber

LT
Apr. 1, 1960.

Plaintiff's Exhibit ....

April 5, 1960

Don McKee
Montgomery Advertiser
Montgomery, Ala.

March 24- ordered copy on Negro attempts to enroll in Univ. of Alabama 750 wds

March 31- ordered copy, biog.-sketch of Police Comsr. Sullivan 1000 wds allow

total 1750 wds

Plaintiff's Exhibit ....

1204 [fol. 573]

Mr. Kesler
Pub Acct

The New York Times

statement from Don McKee, The Montgomery Advertiser, Montgomery,

For Feb. 27-1960 phone story on
Tuskegee Institute students
marching demonstration ---- approx. 750 wds.

LD (Montgy.-Tuskegee) call
especially for Times coverage
(our staffer had not reported
at time; call necessitated;
staffer on scene and wrote
Advertiser story) $2.37

Plaintiff's Exhibit 6

[fol. 574]

574

105

Montgomery Advertiser
Montgomery, Ala.

June 1959

Name

Address

Town

FEB 1960

State

MAN 06573 DEPT. 53 DIV. 11

Month

TAX 98 AMT.

Correspondents	98		5 00
Suburban			
Brooklyn and Queens			
Sports			
Expenses: Corres.	96		
Expenses: Suburban			
Expenses: B & Q			
Expenses: Sports			
Total			5 00

Audited

Checked

Plaintiff's Exhibit 7

New York Times
Times Square
New York 36, N.Y.

[illegible]rd sty Martin Luther King Dec. 3, 1959

Don McKee
The Montgomery Advertiser
Montgomery, Ala.

1206 [fol. 575] Plaintiff's Exhibit 7

Miss Ella Rice

Name _____

Address Mont Fomery Advertiser

Town Montgomery

State Alabama

Month FEB. 1959

Correspondents 90 Space		15	00	
Suburban				
Brooklyn and Queens				
Sports				
Expenses: Corres.				
Expenses: Suburban				
Expenses: B & Q				
Expenses: Sports				
Total		15	00	

$15 00

Audited _____

Checked _____

Plaintiff's Exhibit 8

[fol. 576]

Plaintiff's Exhibit 8

1957

576

H. F. HUDSON, PRESIDENT

W. F. HUDSON, JR. VICE PRESIDENT AND PUBLISHER

THE ADVERTISER COMPANY, INC.

Publishers

MONTGOMERY ADVERTISER — ALABAMA JOURNAL

MORNING · EVENING · SUNDAY

Established 1828

Montgomery, 2, Alabama

March 3, 1959

Mr. Harold Faber
Day National News Editor
National News Desk
New York Times
New York, N.Y.

Sir:

Statement, lineage for February, 1959:

Feb. 6, Macon registrars sued - ~~250~~ s. Cap

Feb. 20, Legislature & segreg.- ~~300~~ Cap

TOTAL- ~~1,050~~

Don McKee

By the way, would you like few ~~hundred~~ pix on Smithsonian archeologists at work in Chattahoochee basin of Ala. & Ga.? (See attached)

[161 577]

1206

7.40
1.60
9.00*

Plaintiff's Exhibit 8

Plaintiff's Exhibit 8

577

Don Hiles
Montgomery Advertiser
Montgomery, Ala.

Name .....

Address .....

Town .....

State .....

1959

Month .....

Correspondents			5	0	0
Suburban					
Brooklyn and Queens					
Sports					
Expenses	Corres.				
	Suburban				
	B & Q				
	Sports				
	Total		5	0	0

Audited .....

Checked .....

Plaintiff's Exhibit 9

[fol. 578] Plaintiff's Exhibit 9

1209

578

Don McKee Montgomery Ala

Allowance $5.00

help on Dixiecrat story

Memo 3/29/59

Plaintiff's Exhibit 9

579

Don McKee
Montgomery Advertiser
Montgomery, Ala.

Name _____

Address _____

Town _____

State _____

Month JUL 1959

Correspondents Collected				5	0	0
Suburban						
Brooklyn and Queens						
Sports						
Expenses — Corres.						
Expenses — Suburban						
Expenses — B & Q						
Expenses — Sports						
Total				5	0	0

Audited _____

Checked _____

Plaintiff's Exhibit 10

580

[fol. 580]

PLAINTIFF'S EXHIBIT 10

Name Don McKee

Address Montgomery Advertiser

Town Montgomery

State Alabama

MIN 645 13 T 66 DIV. 01 x 9

Month TAX [illegible]

NOV 1959

Correspondents	308 words	5 00
Suburban		
Brooklyn and Queens		
Sports	Jay 98	5 00
Expenses: Corres.		
Expenses: Suburban		
Expenses: B & Q		
Expenses: Sports		
Total		

3.00

Audited

Checked

Plaintiff's Exhibit 11

581

1212 [fol. 581] Plaintiff's Exhibit 11

Name Don McKee

Address 6 Mott Jones Lane

Town Northport

State New York

DEC 1959

MAIL # 0672 DEPT. 53 DIV. 11 x 9
Month

TAX 98 AMT.

NATIONAL Correspondents	(-6521) 98	1	0	0	0
Suburban					
Brooklyn and Queens					
Sports					
NATIONAL Corres.	(-6579)				
Expenses Suburban					
B & Q					
Sports					
Total		1	0	0	0

Audited

Checked

Plaintiff's Exhibit 12

582

[fol. 582]

PLAINTIFF'S EXHIBIT 12

1213

Name John Chadwick

Address c/o The Magazine

Town Birmingham

State Alabama

Oct NOV

MAN 1236 DEPT. 66 DIV. 01

Month TAX 93 AMT.

Correspondents					10	00
Suburban						
Brooklyn and Queens						
Sports	Tax 93				10	00
Expenses: Corres.						
Expenses: Suburban						
Expenses: B & Q						
Expenses: Sports						
Total						

10.00

Audited

Checked

Plaintiff's Exhibit 12

Oct 12 memo

Chadwick - Birmingham

Steel Survey

Credit $10.00

Plaintiff's Exhibit 13

583

1214

[fol. 583]

PLAINTIFF'S EXHIBIT 13

Room 305-Shannon Bldg.
South Highlands
Birmingham, Ala.

Name _____

Address _____

Town _____

SEP 1959

State _____

MAR C 2236 DEPT. 66 DIV. 21 x 9

Month TAX 98 AMT.

Correspondents

Suburban

Brooklyn and Queens

Sports

Expenses: Corres. / Suburban / B & Q / Sports / Tour

Audited _____

Checked _____

Plaintiff's Exhibit 14

Chadwick Birmingham
$10.00 Allowance
steel pier, ordered 9/3
for authorization memo 9/30

Plaintiff's Exhibit 14

584

John Chatfield
Room 515-Sterling Bldg.
South Twentieth
Birmingham, Ala.

Name _____

Address _____

Town _____

State _____

Month AUG 1959

Correspondents			2	3	0 0
Suburban					
Brooklyn and Queens					
Sports					
Expenses	Corres.				
	Suburban				
	B & Q				
	Sports				
	Total		2	3	0 0

Audited _____

Checked _____

Plaintiff's Exhibit 15

John Chadwick - Birmingham
Steel Reserves survey $10.00
see memo 8/11 for authorization

Plaintiff's Exhibit 15

John Chadwick - Birmingham
Political Polls allowance
survey $3.00
see memo 8/4 for authorization

Plaintiff's Exhibit 1

536

[fol. 586]

1217

John Chadwick
Room 505-Massey Bldg.
South Magazine
Birmingham, Ala.

Name _____

Address _____

Town _____

State _____

Month JUL 1959

Correspondents	Allocation	2	5	0	0
Suburban					
Brooklyn and Queens					
Sports					
Expenses	Corres.				
	Suburban				
	B & Q				
	Sports				
	Total	2	5	0	0

Audited _____

Checked _____

Plaintiff's Exhibit 16

1218 [fol. 587] Plaintiff's Exhibit 16

John Chadwick - Birmingham

Allowance 10.00 for steel
section see Memo 7/16/59
for authorization Plaintiff's Exhibit 11

John Chadwick - Birmingham

Allowance 10.00 steel
Report see Memo for
authorization 7/24/59 Plaintiff's Exhibit 11

Plaintiff's Exhibit 11

Chadwick - Birmingham
Memo on Negro Policemen
see Memo 7/27/59 for
authorization

Allowance 5.00

[fol. 588]

1219

588

South

The News Magazine of DIXIE

HUBERT BAUGHN
EDITOR

503 MASSEY BUILDING
BIRMINGHAM, ALABAMA

June 27,1959.

Mr. Harold Faber
Day National News Editor
The New York Times
N.Y.,N.Y.

Dear Mr. Faber:

Please have me credited with the following for June,1959:

1. Steelworkers, etc. reaction to strike possibilities.
2. Availability of steel supplies, etc. in Birmingham area.
3. Bi-monthly political situationer for Alabama.
4. Educational TV magaziner. Sent in May but not paid in June.

With best wishes.

Sincerely,

John R. Chadwick
503- Massey Bldg.
Birmingham 3,Ala.

1220 [fol. 589]

Plaintiff's Exhibit 17

Plaintiff's Exhibit 17

John Chadwick
Room 515-Massey Bldg.
South Magazine
Birmingham, Ala.

Name _____

Address _____

Town _____

State _____

JUN 1959

Month _____

Correspondents	Clearance	30 00
Suburban		
Brooklyn and Queens		
Sports		
Expenses — Corres.		
Expenses — Suburban		
Expenses — B & Q		
Expenses — Sports		
Total		30 00

Audited _____

Checked _____

Plaintiff's Exhibit 17

590

[fol. 590]

1291

Chadwick - Birmingham
Allowance $10.00 steel
petticoat see Memo 6/12/59
for authorization

Plaintiff's Exhibit J.T.

Chadwick - Birmingham
Allowance $10.00 Petticoat Memo
6/28/59 see Memo 6/24/59

Plaintiff's Exhibit J.T.

591

John Chadwick
Room 777 Bishop Bldg.
South Magnolia
Birmingham, Ala.

Name _____

Address _____

Town _____

State _____

Month APR 1959

Correspondents Allowance		1	7	5	0
Suburbs					
Brooklyn and Queens					
Sports					
Expenses: Corres.					
Suburbs					
B & Q					
Sports					
Total		1	7	5	0

Audited _____

Checked _____

Plaintiff's Exhibit 18

Chadwick - Birmingham, Ala

Allowance ~~$10.00~~ $5.00 political Memo 4/20

For authorization see Faber Memo 4/23

Plaintiff's Exhibit 18

592

[fol. 592]

PLAINTIFF'S EXHIBIT 18

1223

John Chadwick
Room 505-Vassey Bldg.
South Magazine
Birmingham, Ala.

Name

Address

Town

State

Month [illegible] 1939

Allowance	10.00			
Correspondents' Expenses	.90		10	90
Suburban				
Brooklyn and Queens				
Sports				
Expenses: Corres.				
Expenses: Suburban				
Expenses: B & Q				
Expenses: Sports				
Total			10	90

Audited

Checked

Plaintiff's Exhibit 19

593

1224
[fol. 593]
Plaintiff's Exhibit 19

John Chadwick
Room 905-Massey Bldg.
South Magazine
Birmingham, Ala.

Name _____

Address _____

Town _____

State _____

Month _____ 1958

One Item		
Correspondents		200
Suburban		
Brooklyn and Queens		
Sports		
Expenses — Corres.		
Expenses — Suburban		
Expenses — B & Q		
Expenses — Sports		
Total		200

Audited _____

Checked _____

Plaintiff's Exhibit 20

594

[fol. 594]

Plaintiff's Exhibit 20

John Chadwick
Room 505-Kessey Bldg.
South Magazine
Birmingham, Ala.

Name _____

Address _____

Town _____

State _____

Month Oct. [redacted] 1938

Allow 15 00

Correspondents		24 05
Suburban		
Brooklyn and Queens		
Sports		
Expenses	Corres.	
	Suburban	
	B & Q	
	Sports	
Total		20 ~~15 00~~

$20 ~~15~~

Audited _____

Checked _____

Plaintiff's Exhibit 21

595

[fol. 595]

1226

PLAINTIFF'S EXHIBIT 21

John Chadwick

Conn M Longshore
(Stitch)

10.00

Plaintiff's Exhibit 21

John Chadwick

Congressional Survey Boundary

5.00

Plaintiff's Exhibit 21

596

[fol. 596]

Name John C. Chadwick

Address C/o Jo Massey Bldg, Rm 505

Town Birmingham

State Ala.

Month Aug 1958

Teachers Survey 10				
Correspondents		10		
Suburban				
Brooklyn and Queens				
Sports				
Expenses Corres.				
Suburban				
B & Q				
Sports				
Total		10		

Audited

Checked

Texas Survey

John C. Chadwick

#10.00

Copy 8/1/58 W

Plaintiff's Exhibit 22

598

[fol. 598]

1229

John Chadwick
Room 505-Kassey Bldg.
South Magazine
Birmingham, Ala.

Name _____

Address _____

Town _____

State _____

Month JUL 1958

Allow		
Correspondents		5 +
Suburban		
Brooklyn and Queens		
Sports		
Expenses — Corres.		
Expenses — Suburban		
Expenses — B & Q		
Expenses — Sports		
Total		5 +

Audited _____

Checked _____

Plaintiff's Exhibit 23

1230

[fol. 599]

PLAINTIFF'S EXHIBIT 23

599

John Chadwick
Room 509-Vassey Bldg.
South Magazine
Birmingham, Ala.

Name _____

Address _____

Town _____

State _____

Month MAY 1958

Space 75

Correspondents 7 5 4

Suburban

Brooklyn and Queens

Sports

Expenses
- Corres.
- Suburban
- B & Q
- Sports

Total 7 5 4

$10 HR

Audited _____

Checked _____

Plaintiff's Exhibit 24

600

[fol. 600]

Plaintiff's Exhibit 24

1231

Name John E Chadwick

Address South Massey Bldg. Room 505

Town Birmingham,

State Alabama

Month MAR. 1958

One Item Correspondents				2	+
Suburban					
Brooklyn and Queens					
Sports					
Expenses	Corres.				
	Suburban				
	B & Q				
	Sports				
	Total			2	+

Audited

Checked

Plaintiff's Exhibit 25

601

1232

[fol. 601]

PLAINTIFF'S EXHIBIT 25

R

John Chadwick
~~Birmingham News~~ Room 505 - MASLEY BLK
~~Birmingham, Ala.~~ SOUTH MAGAZINE
BIRMINGHAM, ALABAMA

Name _____

Address _____

Town _____

State _____

Month JAN 1958

250 words

Correspondents		6 [illegible]
Suburban		~~2 50~~
Brooklyn and Queens		
Sports		
Expenses — Corres.	3.50	
Expenses — Suburban		
Expenses — B & Q		
Expenses — Sports		3 50
Total		~~6 00~~

B 10 K

Audited _____

Checked _____

Plaintiff's Exhibit 26

602

[fol. 602]

PLAINTIFF'S EXHIBIT 26

31 January, 1958.

Mr. Harold Faber
National News Editor
The New York Times
N.Y.,.N.Y.

Dear Mr. Faber:

I'd appreciate your having the accounting dept. put the following items on my January account.

LD telephone call to Montgomery, Ala., State Budget Bureau, in connection with state budget roundup story, including return call from budget director:

Call to Montgomery from Birmingham	$ 1.25
Call from Montgomery to Birmingham	2.25
TOTAL	$ 3.50

ok
AF

With best wishes

Sincerely,

John R. Chadwick
Room 505- Massey Bldg.
SOUTH Magazine
Birmingham, Ala.

P.S. The Times is still sending my check to old address at The Birmingham News. Could you please ask them to change to my new one.

JC

Plaintiff's Exhibit 26

603

1234 [fol. 603]

John Chadwick
Birmingham Post
Birmingham, Ala.

South Magazine
Room 413
Massey Bldg.
Birmingham
Ala.

Name

Address

Town

State

Month DEC 1957.

Allowance	7.50	
Space 25	2.50	10 —
Correspondents		
Suburban		
Brooklyn and Queens		
Sports		
Expenses — Corres.	5.00	
Expenses — Suburban		
Expenses — B & Q		
Expenses — Sports		5 00
Total		15 —

Audited

Checked

Plaintiff's Exhibit 27

604

[fol. 604]

PLAINTIFF'S EXHIBIT 27

1235

South

The News Magazine of DIXIE

HUBERT BAUGHN
EDITOR

503 MASSEY BUILDING
BIRMINGHAM, ALABAMA

December 27, 1957.

ok
AF

Mr. Harold Faber
National News Desk
The New York Times
N.Y., N.Y.

Dear Mr. Faber:

I'd appreciate your turning in a $5.00 expense item for November which can be included in my December check.

On or about Nov. 27 I received a checkpoint telephone query from The Times on a statement made by Dr. Guy Suits, GE vice president, when he addressed an annual meeting of Southern Research Institute here. The telegraphic query was some what involved and necessitated my driving to the WU office from my home to pick up copy, return home, check Suits' entire speech and phone N.Y.

Incidentally, I dictated a story to Barrett earlier this month on the Alabama amendments vote(including the Macon County abolition issue). Assume that has been credited to me. It was handled entirely by phone. $7.50 AF

Best wishes to you and to everyone at The Times for a happy New Year.

Cordially,

John Chadwick
South Magazine
Room 503, Massey Bldg.
Birmingham, Ala.

Plaintiff's Exhibit 21

Name John R. Chadwick

Address Birmingham News

Town Birmingham

State Alabama

Month SEP 1957

Correspondents	Space 271 35¢ Week 3480 350		3	3	3	0
Suburban						
Brooklyn and Queens						
Sports						
Expenses: Corres.						
Expenses: Suburban						
Expenses: B & Q						
Expenses: Sports						
Total			3	3	3	0

140 W

Audited

Checked

Plaintiff's Exhibit 28

606

[fol. 606]

PLAINTIFF'S EXHIBIT 28

1237

(S)

Name JOHN R CHADWICK

Address BIRMINGHAM NEWS

Town BIRMINGHAM

State ALABAMA

Month AUG 57

(S) 150 words	1.50		
Space 20	2.00	3 50	
Correspondents		2 00	
Suburban			
Brooklyn and Queens			
Sports			
Expenses Corres.			
Suburban			
B & Q			
Sports			
Total		3 50	
		2 00	

15 HF

Voucher ADDED(150) 6.50

(Over)

Checked

Plaintiff Exhibit 29

62

1238 [fol. 607]

In Plaintiff's Exhibit 29

(5)

Name JOHN R. CHADWICK

Address BIRMINGHAM NEWS

Town BIRMINGHAM

State ALABAMA

Month AUG 1957

(5) 150 words

Correspondents		150
Suburban		
Home Edn and Queens		
Sports		
Expenses	Corres.	
	Suburban	
	B & Q	
	Sports	
	Total	150

Audited

Checked

Plaintiff's Exhibit 30

[fol. 608]

Plaintiff's Exhibit 30

1958

608

1940 [fol. 609] Plaintiff's Exhibit 31

Name John Chadwick

Address Birmingham News

Town Birmingham

State Alabama

Month JUN 1957

Spaces

Correspondents — NTO

Brooklyn and Queens

Sports

Expenses — Corres.
Suburban
B & O
Sports

Total — NTO

43

Audited

Checked

Plaintiff's Exhibit 31

609

John Chadwick
Birmingham News
Birmingham, Ala.

Name

Address

Town

State

Month MAY 1957

Space 50 350 words	5.00	3.50		
Correspondents			8	50
Suburban				
Brooklyn and Queens				
Sports				
Expenses Corres.	2.53			
Suburban				
B & Q				
Sports			2	53
Total			11	03

115 11

Audited

Checked

Plaintiff's Exhibit 32

610

[fol. 610]

PLAINTIFF'S EXHIBIT 32

1941

The Birmingham News
EVENING AND SUNDAY

NEWS DEPARTMENT
VINCENT TOWNSEND, MANAGING EDITOR

BIRMINGHAM 2, ALA.

30 May, 1957.

Harold Faber
Day National News Desk
The New York Times
N.Y., N.Y.

Dear Mr. Faber:

I rang up a $2.53 bill on a long distance call to Auburn, Ala., during May in connection with a Potter-ordered story on the Auburn professor fired as result of a letter he wrote the campus paper on N.Y.'s school integration.

Best wishes,

John R. Chadwick
Editorial Dept.
The Birmingham News

Plaintiff's Exhibit 52

[Fol. 611]
EXHIBITS ATTACHED

John Chadwick
Birmingham News
Birmingham, Ala.

Name _____

Address _____

Town _____

State _____

Month MAR 1957

Correspondents	space 3.9 150 words	3.90 1.50	540
Suburban			
Brooklyn and Queens			
Sports			
Expenses	Corres.		
	Suburban		
	B & Q		
	Sports		
	Total		540

$10.44

Audited _____

Checked _____

Plaintiff's Exhibit 33

612

[fol. 612]

Plaintiff's Exhibit 33

1958

John Chadwick
Birmingham News
Birmingham, Ala.

Name _____

Address _____

Town _____

State _____

Month FEB • 1957

Correspondents	4.50	16	50
Suburban			
Brooklyn and Queens			
Sports			
Expenses — Corres.			
Expenses — Suburban			
Expenses — B & Q			
Expenses — Sports			
Total		16	50

Audited _____

Checked _____

Plaintiff's Exhibit 34

Name John Chadwick

Address Birmingham News

Town Birmingham

State Alabama

Month Jan 1957

200 words space 37 Correspondents	2.00 3.70		5 70
Suburban			
Brooklyn and Queens			
Sports			
Expenses — Corres.	4.90		
Expenses — Suburban			
Expenses — B & Q			
Expenses — Sports			4 90
Total			10 60

$15.00

Audited

Checked

Plaintiff's Exhibit 35

[fol. 614]

PLAINTIFF'S EXHIBIT 35

1245

614

The Birmingham News
EVENING AND SUNDAY

NEWS DEPARTMENT
VINCENT TOWNSEND, MANAGING EDITOR

BIRMINGHAM 2, ALA.

[fol. 615]

1246

4 February, 1957.

Mr. Harold Faber
National News Editor
The New York Times
New York, N.Y.

Dear Mr. Faber:

I am attaching the personal information card.

If not too late for the January payroll, could you please send through a long distance telephone expense item of $4.90, which I paid in rounding up an early January story on Tuscaloosa Publisher Buford Boone's speech before a Citizens Council meeting there.

Needed to clear up a couple of points on his speech and discovered that Mr. Boone, a very fine fellow, really does like to talk.

With best wishes,

Sincerely,

John R. Chadwick
Editorial Dept,
The Birmingham News
Birmingham 2, Ala.

Plaintiff's Exhibit 55

John Chadwick
Birmingham News
Birmingham, Ala.

Name _____

Address _____

Town _____

State _____

Month DEC 1956

Allowances			
Correspondents		25	00
Suburban			
Brooklyn and Queens			
Sports			
Expenses	Corres.	5	50
	Suburban		
	B & Q		
	Sports	55	0
	Total	80	50

$100 ##

Audited _____

Checked _____

Plaintiff's Exhibit 36

[fol. 616] PLAINTIFF'S EXHIBIT 36

1247

46

The Birmingham News
EVENING AND SUNDAY

NEWS DEPARTMENT
VINCENT TOWNSEND, MANAGING EDITOR

BIRMINGHAM 2, ALA.

Jan. 4, 1956.

Mr. Harold Faber
Day National News Desk
The New York Times
N.Y., N.Y.

Dear Mr. Faber:

I'd appreciate it if you'd send through an expense item of $5.50 in connection with my coverage of the New Year's Eve night bombing of a Negro residence.

The expenses were incurred through the use of my personal car and coin telephone.

With best wishes for the new year

Sincerely,

John R. Chadwick
The Birmingham News

26 00
5 50
3 50
4 00
2 60
4 00
1 50
7 00
4 00
39 20
$75 HF

Plaintiff's Exhibit 4

1248 [fol. 617]

-617

John Chadwick
Birmingham Night
Birmingham, Ala.

Name _____

Address _____

Town _____

State _____

Month Nov 1956

Commissions	Sheet 1-02	10	20	
Suburban				
Brooklyn and Queens				
Sports				
Expenses: Corres.				
Suburban				
B & Q				
Sports				
Total		10	20	

102 lines
10.20

Plaintiff's Exhibit 37

[fol. 618]

PLAINTIFF'S EXHIBIT 37

Audited _____

Checked _____

Plaintiff's Exhibit 37

1249

48

Name John Chadwick

Address Birmingham News

Town Birmingham, Alabama

State

Month 9-4-1956

Correspondents		5 0 0
Suburban		
Brooklyn and Queens		
Sports		
Expenses — Corres.		
Expenses — Suburban		
Expenses — B & Q		
Expenses — Sports		
Total		5 0 0

Audited

Checked

Plaintiff's Exhibit 38

619

1250 [fol. 619] PLAINTIFF'S EXHIBIT 38

John Chatfield
Birmingham News
Birmingham, Ala.

Name

Address

Town

State

Month August 1956

Correspondents	Acct 98	9	80
Suburban			
Brooklyn and Queens			
Sports			
Expenses — Corres.			
Expenses — Suburban			
Expenses — B & Q			
Expenses — Sports			
Total		9	80

$15.45

Audited

Checked

Plaintiff's Exhibit 39

1.80
8.00
9.80

Price

Plaintiff's Exhibit [illegible] [620]

Plaintiff's Exhibit 39

1251

620

John Chadwick
Birmingham News
Birmingham, Ala.

Name _____

Address _____

Town _____

State _____

Month 6/56

300 wds

Correspondents		3
Suburban		
Brooklyn and Queens		
Sports		
Expenses	Corres.	
	Suburban	
	B & Q	
	Sports	
Total		3

Audited _____

Checked _____

Plaintiff's Exhibit 40

621

1252 [fol. 621] Plaintiff's Exhibit 40

John Chadwick
Birmingham News
Birmingham, Ala.

Name _____

Address _____

Town _____

State _____

Month 5/56

Correspondent	15	150
Suburban		
Brooklyn and Queens		
Sports		
Expenses — Corres.		
Expenses — Suburban		
Expenses — B & Q		
Expenses — Sports		
Total		150

bs hf

Audited _____

Checked _____

Plaintiff's Exhibit 42

[fol. 622]

Clerk's Note re Plaintiff's Exhibit No. 41
Missing Due to Error in Marking

[fol. 623]

Plaintiff's Exhibit 42

61

John Chadwick
Birmingham Road
Birmingham, Mich.

Name

Address

Town

State

Month 4/54

50 150 words. Correspondents	1.50		8 50
Suburban			
Brooklyn and Queens			
Sports			
Expenses — Corres.			
Suburban			
B & Q			
Sports			
Total			8 50

$25 HF

Audited

Checked

Plaintiff's Exhibit 43

Chadwick

400
300
Space 700

Plaintiff's Exhibit 43

1254

[fol. 624]

John Chadwick
Birmingham News
Birmingham, Ala.

Name

Address

Town

State

Month 2/56

Allowance 25.- 6.10			
Correspondents 1000 wds. 10.-		41	10
Suburban			
Brooklyn and Queens			
Sports			
Expenses: Corres.			
Suburban			
B & Q			
Sports			
Total		41	10

$100 HF

Audited

Checked

Plaintiff's Exhibit 44

[fol. 626]

PLAINTIFF'S EXHIBIT 44

1255

from DAY NATIONAL NEWS DESK

MEMORANDUM for: Mr. Hessler:

Please credit Chadwick of Birmingham with $25.00 for sketch of Miss Lucy in today's paper.

AF
Alber

LT
Feb. 9, 1956.

Plaintiff's Exhibit 44

Chadwick

8.00 "
8.10
8.00
6.10 "

4.00 "
6.00
10.00 "

Plaintiff's Exhibit 44

1256 [fol. 626]

John Chadwick
Birmingham News
Birmingham, Ala.

Name

Address

Town

State

Month 1/56

allowance 1.10
690 mls 6.90
Correspondents 8 +

Suburban

Brooklyn and Queens

Sports

Expenses
Corres.
Suburban
B & Q
Sports

Total 8 +

$15 mf

Audited

Checked

Chadwick

Birmingham

#1.10

Stockholders Disaster Meeting

Plaintiff's Exhibit 45

[fol. 627]

PLAINTIFF'S EXHIBIT 45

1257

627

Name Maurice Castle Jr

Address Mobile Press Register

Town Mobile 9,

State Alabama

Oct 1958

Month

Mobile 300 Correspondents		5	-
		3	00
Suburban			
Brooklyn and Queens			
Sports			
Expenses — Corres.			
Suburban			
B & Q			
Sports			
Total		5	-
		3	00

85 HF

Audited

Checked

Plaintiff's Exhibit #6

[fol. 628] 1258 PLAINTIFF'S EXHIBIT 46

The Mobile Press Register

MORNING EVENING SUNDAY

PHONE HE 3-1581 P O BOX 1609

MOBILE 9, ALABAMA

Nov. 5, 1958

Auditing Department

New York Times

October Statement

Oct. 24----state docks story- -------300 words

Maurice Castle Jr.

Mobile correspondent

[fol. 629]

Plaintiff's Exhibit 46

1259

Name Maurice Castle Jr.

Address The Mobile Press Register

Town P.O. Box 1609.

State Mobile 9 Alabama

Month JAN 1959

(1 Item)						
Correspondents 100 words				2	0	0
Suburban						
Brooklyn and Queens						
Sports						
Expenses — Corres.						
Expenses — Suburban						
Expenses — B & Q						
Expenses — Sports						
Total				2	0	0

Audited

Checked

Plaintiff's Exhibit 47

630

1260

[fol. 630]

PLAINTIFF'S EXHIBIT 47

Feb. 3, 1959

Auditing Department
New York Times

JANUARY STATEMENT

Jan. 21-----bank statement-------100 words

Maurice Castle Jr.
Mobile Correspondent

[fol. 631]

Plaintiff's Exhibit 47

1961

63.1

Syracuse, N. Y.

Name Maurice W. Castle, Jr.

Address Mobile Press

Town Mobile,

State Alabama

Month MAY 1958

Space 170 Correspondents						
Suburban						
Brooklyn and Queens						
Sports						
Expenses Corres.						
Suburban						
B & Q						
Sports						
Total						

315 ff

Audited

Checked

Plaintiff's Exhibit 48

612

1262

[fol. 632]

PLAINTIFF'S EXHIBIT 48

Charleston, S. C. Wilson

Name Maurice Castle Jr.

Address Mobile Press

Town Mobile,

State Alabama

Month JAN 1958

200 words

Correspondents		
Suburban		
Brooklyn and Queens		
Sports		
Expenses	Corres.	
	Suburban	
	B & Q	
	Sports	
	Total	

$3 mc

Audited

Checked

Plaintiff's Exhibit 49

633

[fol. 633]

Plaintiff's Exhibit 49

1963

auditing department

new york times

JANUARY STATEMENT

Jan. 27------bank meeting------250 words

Maurice Castle

maurice castle jr.

mobile correspondent

Plaintiff's Exhibit .....

1264

[fol. 634]

Plaintiff's Exhibit 49

Name Maurice Castle Jr.

Address The Mobile Press Register

Town P.O. Box 1609

State Mobile, 9, Alabama

Month Jan 1957

170 words		
Correspondents		170
Suburban		
Brooklyn and Queens		
Sports		
Expenses — Corres.		
Expenses — Suburban		
Expenses — B & Q		
Expenses — Sports		
Total		170

Audited

Checked

Plaintiff's Exhibit 50

635

[fol. 635]

PLAINTIFF'S EXHIBIT 50

1965

The Mobile Press Register

Mobile, Alabama

JANUARY STATEMENT

Jan. 17 (bank meeting)--------100 words

Maurice Castle, Jr.

Mobile correspondent

1966 [fol. 636]

Plaintiff's Exhibit 50

Name Maurice Castle Jr.

Add. Press Register

Town Mobile

State Ala.

Month 5/56

350 words		
Correspondents		350
Suburban		
Brooklyn and Queens		
Sports		
Expenses — Corres.		
Expenses — Suburban		
Expenses — B & Q		
Expenses — Sports		
Total		350

+5 HF

Audited

Checked

Plaintiff's Exhibit 51

[fol. 637]

Plaintiff's Exhibit 51

1967

The Mobile Press Register

Auditing Department

MAY STATEMENT

May 15-------Waterman ships.....200 words

May 29------Spring Hill graduation.150 words

$ 350 words total

Maurice Castle, Jr.

Mobile correspondent

1268 [fol 638]

Plaintiff's Exhibit 51

Virginia Gazette, Inc.
Public Ledger
Norfolk, Virginia

Name _____

Address _____

Town _____

State _____

Month 1/56

Correspondents				4	7	0
Suburban						
Brooklyn and Queens						
Sports						
Expenses	Corres.					
	Suburban					
	B & O					
	Sports					
Total				4	7	0

15 MF

Audited _____

Checked _____

Plaintiff's Exhibit 52

[fol. 639] Plaintiff's Exhibit 52

1269

The Mobile Press Register

Mobile, Ala.

Jan. 31, 1956

Accounting Department

New York Times

JANUARY STATEMENT

Jan. 11.....bank statement.....100 words BANK ELECTION #4.70

Jan.18.....bank statement.....200 words BANK MERGER

---

300 words total

Maurice Castle

Maurice Castle, Jr.

Mobile correspondent

Plaintiff's Exhibit 52

640

1270

[fol. 640]

NFD033 NS MYA703 NPR COLLECT 90

MONTGOMERY ALA MAR 2 740PMC

MR DESMOND

NEW YORK TIMES SUNDAY REVIEW NYK

EXACT VERCAY FIGURES ON TUSKEGEE BOUNDARY CHANGE NOT IMMEDIATELY AVAILABLE. CAN CHECK FURTHER FRIDAY IF SO DESIRE. GERRYMANDERING TOOK APPROXIMATELY 3000 NEGROS OUT OF THE CITY LIMITS INCLUDING AN ESTIMATED 600 NEGRO VOTERS. THERE WERE NPREVIOUSLY 600 NEGRO VOTERS. NO WHITE VOTERS AFFECTED. NEGROES OUT NUMBERV WHITES 7 TO 3 IN CITY AND 6 TO 1 IN COUNTY. TUSKEGEE INSTITUTE AND HEAVILY POPULATED NEGRO RESIDENTIAL SECTIONS WERE ELIMINATED FROM THE CITY LEAVING ONLY 4 TO 1 NEGRO VOTERS.

HAVE ENGRAVING OF ARTIST SKETCH OF AEREA BEFORE AND AFTER IF INTERESTED

WAYNE POWELL MONTGOMERY ADVERTISER

Plaintiff's Exhibit 56

[fol. 646]

1276

WU NPCOOS NS BMA166 DPR COLLECT

BIRMINGHAM ALA APRIL 13 240PMC

HAROLD FABER , OR NATIONAL NEWS DESK

NEW YORK TIMES TIMES SQUARE NYC

D YU INTERESTED IN BIRMINGHAM NEWS EDITORIAL COMMENT ON SALISBURY

TUESDAY PIECE

JOHN CHADWICK.

Plaintiff's Exhibit 57

608PME .

April 13 1960
435p

John Chadwick
South Magazine AL 1-5171 or AL 2-5872
Birmingham Ala.

Send text editorial on Salisbury story soonest.

Potter Nyt'mes

72pr 12 444 V

NPAI

APR 13 [illegible]

[illegible]

Plaintiff's Exhibit 57

[fol 647]

647

5:00 p

Managing Editor

Baltimore Sun B16 NP
Louisville Courier Journal B17 ?
New Orleans Times Picayune B18
Richmond Times Dispatch B19
Charlotte Observer B20
Raleigh News and Observer B21
Charleston News & Courier B22
Jacksonville Times Union B23
Tampa Tribune B24
Birmingham News B25 ?
Nashville Tennessean B26
Memphis Commercial Appeal B27
Chattanooga Times B28
Jackson Daily News B29
Arkansas Gazette B30 = L Rock ?
Atlanta Constitution B31
Atlanta, Journal B32

NP MB 59P

MO NEW YORK TIMES WESTERN UNION FEB 29 NY

[redacted]

Plaintiff's Exhibit 53

[fol. 641]

MU NL WESTERN UNION FEB 29 1960 NY

WESTERN UNION TELEGRAM

Austin Statesman - Austin, Texas B33
Dallas Morning News - Dallas, Texas B34
Fort Worth Star Telegram, Fort Worth, Texas B35
Daily Oklahoman

B33 MB

WESTERN UNION TELEGRAM

Austin Statesman, Austin, Texas
Dallas Morning News, Dallas, Texas
Fort Worth Star Telegram, Fort Worth, Texas
Daily Oklahoman, Oklahoma City, Oklahoma

Plaintiff's Exhibit 53

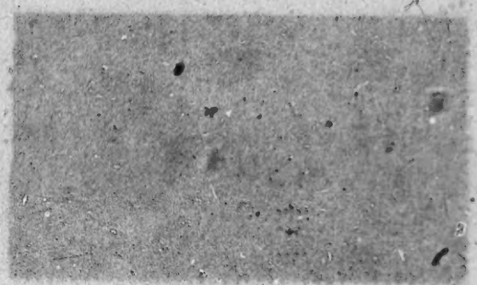
WESTERN UNION TELEGRAM

MO NEW YORK NY 1960.

Please send Tuesday press collect 150 words direct quotation from your latest editorial on civil rights debate in Senate with specific reference to Lyndon Johnson's role and possible affects on his presidential hopes. Thanks.

Faber, N.Y. Times

Plaintiff's Exhibit 58



1272
[fol. 642]

John R. Chadwick
South Magazine
Birmingham Ala.

15 Rpd Pd f. March 24 8:30

WU Western Union
MAR 24 1960 Plbst

On Fri. Pls send 500 governers action on salaries after he meets with teachers . thanks.

faber

N.Y. Times

A3NB

447

Cert

Plaintiff's Exhibit 54

643

[fol. 643] Plaintiff's Exhibit 54

WESTERN UNION TELEGRAM

DOMESTIC SERVICE
Check the class of service desired; otherwise this message will be sent as a fast telegram

TELEGRAM	
DAY LETTER	
NIGHT LETTER	

WESTERN UNION
TELEGRAM

1206 (4-58)

W. P. MARSHALL, PRESIDENT

OPTIONAL SERVICE
If service desired; check here message will be sent at the full rate

FULL RATE	
LETTER TELEGRAM	
SHORE-SHIP	

NO. WDS.-CL. OF SVC.	PD. OR COLL.	CASH NO.	CHARGE TO THE ACCOUNT OF	TIME FILED
				3.23.60 733P

Send the following message, subject to the terms on back hereof, which are hereby agreed to

Hg opelt

WMU NC WESTERN UNION MAR 23 1960 NY

DON McKEE
ADVERTISER
MONTGOMERY, ALABAMA

11ke FIVEHUNDRED (500) WORD WEEKENDER FOR WATCHTOWER FEATURE ON NEW ATTEMPT OF NEGROES TO ENTER ALABAMA UNIVERSITY COVERING AAA HOW IMPORTANT IS EFFORT BBB HOW DOES IT TIE IN WITH WAVE OF DEMONSTRATIONS THROUGHOUT SOUTH CCC WHAT IT REFLECTS ABOUT NEW MOOD OF NEGRO STOP COPY THURSDAY PLEASE ACKNOWLEDGE

DESMOND

NEWYORK TIMES SUNDAY REVIEW

NPB11
439pm
Ans

Plaintiff's Exhibit 55

GNPD024 NS MYA480 DPR COLLECT

DESMOND

NEW YORK TIMES NYK

SUNDAY REVIEW-

WILL DO, RE 500 WDS UNI

DON MCKEE THE ADVERTISER MO

DPR COLLECT

W U X MONTGOMERY, ALA MAR 23 408PMC

DESMOND
NEW YORK TIMES NYK
SUNDAY REVIEW

WILL DO, RE 500 WDS UNIV. OF ALA. NEGRO

ENTRY TRY THURSDAY

[Vol 644]

1274

Plaintiff's Exhibit 55

Plaintiff's Exhibit 55

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION
TELEGRAM

W. P. MARSHALL, PRESIDENT

1220 (8-54)

SYMBOLS
DL = Day Letter
NL = Night Letter
LT = International Letter Telegram

The filing time shown in the date line on domestic telegrams is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination

3.2.60

WU WESTERN UNION MAR 3 1960 NM

DON McKEE

THE ADVERTISER

MONTGOMERY, ALABAMA

CAN YOU GET FIGURES ON AREA OF CITY OF TUSKEGEE BOTH OLD AND NEW BOUNDARIES ALSO POPULATION OF OLD CITY AND NEW CITY BROKEN DOWN BY NEGRO AND WHITE STOP PLEASE WIRE REPLY SOONEST

DESMOND

NYTIMES SUNDAY REVIEW

[fol. 645]

Plaintiff's Exhibit 56

Plaintiff's Exhibit 56

1275

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

30

XPD015 BMA541 DPR COLLECT

BIRMINGHAM ALA APR 15 324PMC

HAROLD FABER OR NATIONAL NEWS DESK

NEWYORK TIMES TIMES SQUARE NYK

SHALL I FILE TEXT OF BIRMINGHAM NEWS EDITORIAL OF TODAY COMMENTING ON SALISBURY STORIES? NEWS CRITICAL OF "AMAZING RECITAL OF UNTRUTHS AND SEMITRUTHS" AND "SHODDY REPORTING"

JOHN CHADWICK.

507PMEST

Plaintiff's Exhibit 57

5 Apr 11

5-25P

John R. Chadwick
South Magazine
Birmingham, Ala.

Please file text of editorial.

O'Neill 520pm Apr 15

1278 [fol. 648]

Plaintiff's Exhibit 58

Plaintiff's Exhibit 5

NPC041 NSC040 NS BMB545 DPR COLLECT 20

BIRMINGHAM ALA 8 555PMC

HAROLD FABER OR NATIONAL NEWS DESK

NEWYORK TIMES NYK

LANEY UNAVAILABLE UNTIL ABOUT 8 PM YOUR TIME WILL FILE BRIEFLY AS SOON AS CONTACTED ON RAILROAD FEATHERBED DISPUTE.

JOHN CHADWICK.

740PMEST.

Plaintiff's Exhibit 59

Telegram

0-750

29

WU NPD024 NS BMA527 NPR COLLECT

BIRMINGHAM ALA 8 528PMC

NATIONAL NEWS WEEK

NEW YORK TIMES NYK

J C LANEY, CENTER OF BROTHERHOOD LOCOMOTIVE ENGINEER DISPUTE UNAVAILABLE AT THIS POINT FOR COMMENT ON POSSIBLE ODSTER. WILL TRY AGAIN SATURDAY MORNING AND FILE BRIEFLY FOR SUNDAY

JOHN CHADWICK.

1012PM..

Plaintiff's Exhibit 59

[Vol 649]

Plaintiff's Exhibit 59

[fol. 650]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 60

Jan. 26, 1959

Dear Mr. Faber:

Would you be interested in a roundup, backgrounder, etc., of these two stories, ie., that of loyalty oath fight and expected all-out fight on loan sharks (which are thicker'n flies in this state) by new administration?

/s/ DON MCKEE

Don McKee

January 30, 1959

Mr. Don McKee
Montgomery Advertiser
Montgomery, Alabama

Dear Mr. McKee:

Although we cannot use either of your two suggestions, I hope you will continue to make them. It's just been a tight two weeks.

Sincerely,

HAROLD FABER
Day National News Editor

HF:ha

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 61

THE ADVERTISER COMPANY

Montgomery 2, Alabama

July 25, 1957

Harold Faber
& National News Desk
New York Times, N.Y., N. Y.

Dear Mr. Faber:

Bob Murphy, your regular stringer, has left the paper and is now working in Forida.

[fol. 651] I would like to be considered as his replacement because of my background and work with you on the same basis. Here are my present qualifications: I'm a general assignment reporter on the Advertiser, hours 4 p. m. to 1 a. m., and have been here since October 1956.

In 1954 I was graduated from City College and there edited the *Campus* (I understand this is also your old college paper) and the yearbook. Worked for three months on the New York Journal American, was drafted in the Fall and served two years in the Army—Fort Benning, Georgia.

Professor Rosenthal of the College's English Department can add some more details to my background. I also studied under Milton Bracker when he gave a course at the College.

I plan on being in the South a few more years before I make my great move back North. Basically, I still feel I'm a Northerner and hence know what the New York Times carries and is interested in. Incidentally, I still subscribe to the *New York Times*.

Last night I called in a story on a raid made on the Tuskeegee Civic Assn. by the attorney general here. Your rewrite man, Larry O'kean (not sure of spelling there) handled it—I told him that I was subbing for Murphy and

getting it to the Times two hours before either of the two wire services.

Other references: Tom Sellers, City Editor of the Advertiser.

Hoping to hear from you,

/s/ Ed Swietnicki
Ed Swietnicki

P.S. My Montgomery address is 21 S. Hopper Street (Phone AM 5-8352)

July 28, 1957

Mr. Edward Swietnicki
Montgomery Advertiser
Montgomery 2, Alabama

Dear Mr. Swietnicki:

Thank you for your letter of application, but we are [fol. 652] going to hold off for a while making any replacement. I assure you that when we do, yours will be seriously considered.

Sincerely,

Harold Faber
Day National News Editor

LT

September 15, 1957

Mr. Edward Swietnicki
Montgomery Advertiser
Montgomery, Ala.

Dear Mr. Swietnicki:

If you are still interested in becoming our stringer in Montgomery, here is a copy of our rules for correspondents

aild a card to be filled out and returned. If you have any questions, please don't hesitate to ask them.

With best wishes,

Sincerely,

HAROLD FABER
Day National News Editor

LT
Encl.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 62

(CITY) _____ STATE _____

Name _____ Age _____

Newspaper with which connected _____

MORNING EVENING

Position on Paper _____

Office Address _____

Residence Address _____

Office Telephone _____ Residence Telephone _____

Days Off: _____ Working Hours: _____

Day of appointment as N. Y. Times correspondent _____

_____

[fol. 653]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 63

THE ADVERTISER COMPANY

Montgomery 2, Alabama

Jan. 14, 1957

Mr. Hal Faber
Day National News Editor
The Times
New York, N. Y.

Dear Mr. Faber:

As per your instructions to Bill McDonald and Phil Benjamin for clarification of my status as correspondent for The Times, here is the information you requested:

Bill asked me to take over his duties with The Times on, I believe, December 27. You are acquainted with his reasons, I'm sure.

I filed material on that and subsequent dates and I have worked with both Benjamin and Clarence Dean on the bus situation here. I would like to continue working with you as your regular Montgomery area correspondent.

Bill mentioned that he had sent you a resume of my background. If there is anything further you require, I will be pleased to forward it to you.

I look forward to a pleasant working relationship.

Sincerely,

/s/ ROBERT J. MURPHY
Robert J. Murphy

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 64

Jan. 17, 1957

Mr. Robert J. Murphy
Montgomery Advertiser
Montgomery, Alabama

Dear Mr. Murphy:

[fol. 654] Will you please fill out the enclosed card and return it. I am also enclosing a set of the rules and regulations for our correspondents.

With best wishes.

Sincerely,

HAROLD FABER
Day National News Editor

LT
Encl.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 65

THE MONTGOMERY ADVERTISER
Montgomery 2, Alabama

Jan. 17, 1957

Mr. Hal Faber
Day National News Editor
The Times
New York, N.Y.

Dear Mr. Faber:

I haven't seen Bill McDonald in a few days so I thought I should get a resume off to you in order to speed things in case he hasn't sent you my background.

Briefly, I have been in the newspaper business about seven years. In addition, I have spent about six years in the public relations field.

I have worked for the following papers: Honolulu (TH) Advertiser; Scranton (Pa) Times; Mach Chain comprising the Daily Argus, Mt. Vernon, N.Y.; New Rochelle Standard Star; Yonkers Herald Statesman; White Plains Reporter Dispatch. While in Westchester I worked for the Westchester County News Bureau which is an affiliate and services the Macy Chain. Other papers include: Newark (NJ) Star Ledger and, of course, the Montgomery Advertiser. I have also been night news editor for Transradion Press Service.

In addition to the above, I have also worked on a per diem basis for the (NY) News, Journal American and Chicago Tribune.

[fol. 655] My experience ranges from Standard beats in Washington, The UN, various state capitols, business, labor. I have never been a copy boy but I've worked just about every other spot from slot to obits. I am presently night city editor and feature writer.

In the field of public relations, I worked in executive capacities and handled some of the nation's finest products. I left the field for personal reasons to re-establish myself in the newspaper business. It may seem strange to you that a New Yorker with two children would pack up and move to Montgomery, Alabama, but my move has proved sound.

If you need more detailed information, Mr. Faber, I will be pleased to send it to you.

Sincerely,

/s/ Robert J. Murphy
Robert J. Murphy

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 66

THE ADVERTISER COMPANY

Montgomery 2, Alabama

January 20, 1957

Mr. Harold Faber
Day National News Desk
The Times
New York, N.Y.

Dear Mr. Faber:

I am returning a filled-in reference card for your files.

I have read your letter of instructions and I will follow them.

However, I have kept no record of requested and filed stories and, therefore, will rely entirely on the word count of The Times.

Sincerely,

/s/ ROBERT J. MURPHY
Robert J. Murphy

[fol. 656]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 67

July 15, 1957

Robert J. Murphy
The Advertiser
Montgomery, Alabama

Dear Mr. Murphy:

We sent you a check for the Tuskeegee assignment before your bill arrived, which may explain the difference between them. The check was designed to take care of your expenses, but I see they were underestimated. An additional

check will be authorized; but you may have to wait a month for it. It will go on our July payroll, which won't be out until about the tenth of August. I am sure it, plus the previous check, will take care of the situation.

Sincerely,

HAROLD FABER
Day National News Editor

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 68

Mr. John R. Chadwick
Birmingham News
Birmingham, Alabama

Dear Mr. Chadwick:

May I thank you for the fine work you have been doing for us on the University of Alabama story. We have received compliments for your sketch of Miss Lucy from many sources; both Wayne Phillips and Pete Kihss have told me that they couldn't have done their stories without your help. You will find our appreciation reflected in your check for the month of February.

With best wishes,

Sincerely,

HAROLD FABER
Day National News Editor

LT

[fol. 657]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 69

April 20, 1958

Mr. John S. Chadwick
c/o South
Massey Building
Room 505
Birmingham, Alabama

Dear Mr. Chadwick:

Can you prepare and send to us, in duplicate, a 600-word advance story on the Alabama primary, for use in the paper of May 4? If desegregation plays a role in the primary, will you kindly note it in an appropriate place in the story. Also, if Negro voting rights play any part in the primary, will you note that, too? I would like to have the copy in hand here Monday, April 28. Of course, if developments overtake the airmailed story, we would want you to substitute with another story, telephoned to our recorder, LA 4-4554.

Sincerely,

HAROLD FABER
Day National News Editor

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 70

May 9, 1958

Mr. Harold Faber
Day National News Editor
The New York Times
N. Y., N. Y.

Dear Mr. Faber:

Due to my illness your query on the fire ant and its reported destruction of wildlife and fish through an eradication program reached me tardily.

In hopes the attached will furnish you with at least a portion of your needs I am attaching a reply I have from the Alabama Dept. of Conservation.

If you wish me to pursue through the office of Dr. Baker [fol. 658] mentioned in the attached letter please let me know.

Best wishes,

/s/ JOHN R. CHADWICK

John R. Chadwick
503 Massey Building
Birmingham

STATE OF ALABAMA
DEPARTMENT OF CONSERVATION
MONTGOMERY, ALABAMA

May 8, 1958

Mr. John R. Chadwick
South Magazine
Room 503, Massey Building
Birmingham, Alabama

Dear Mr. Chadwick:

I am enclosing a copy of the statement made by Mr. W. H. Drinkard on fire ant treatment damage in Alabama. We have no further information from the Department at this time. However, I believe that Dr. M. F. Baker, Leader, Wildlife Research Unit, Auburn, has the results of a study made in Wilcox County. If you would contact him, he would give you information on that area, which is the most complete study that has been finished in Alabama to date.

The Department of Conservation has conducted a study of the effects on fish, but at this time, results are inconclusive. Because of widespread fish deaths both inside and outside the treatment areas, and difficulty with detection and measurement of heptachler in fish bodies, the study has been hampered to some degree, making pure conclusions practically impossible.

All indications, however, in the Alabama studies and in others made in various other sections of the nation are that the chlorinated hydrocarbons such as DDT, heptachlor, dieldrin, etc., will kill fish if large enough concentrations are introduced into ponds or lakes. Because of this, agencies applying insecticides have been urged to use caution in application whether for fire ants or other insects. There is also a strong possibility that chemicals washing into [fol. 659] water sources and impoundments may eventually build up to the concentrations required to kill fish life or the bottom organisms upon which they feed.

We in the Conservation Department realize that the farmer has a serious problem with the fire ant on his agricultural lands. However, it is our stand that rather than take a chance on killing all natural bird enemies of the ants, along with many other beneficial and necessary forms of life, the Congress should be persuaded to appropriate money for a research program which would reveal the long term effects of these chemicals. Not only is this a serious problem to wildlife and fish, but conceivably within a few years, our water supply, soil produced food supply and even animal products might be contaminated or polluted by residual effects of insecticides.

If these few lines bring any other questions to mind, feel free to call on me at any time.

Sincerely,

/s/ George M. Kyle

George M. Kyle, Editor
Alabama Conservation

Enclosure

STATE DEPARTMENT OF CONSERVATION
INFORMATION AND EDUCATION SECTION
MONTGOMERY, ALABAMA
GEORGE M. KYLE, EDITOR

(One photograph attached to original)

[fol. 660] THESE DIED ON 100 ACRES OF FIRE ANT TREATMENT AREA. Chemical treatments to control fire ants in Autauga County apparently resulted in deaths of six rabbits, three quail and 48 song birds on one small area. Total land treated with the chemicals totalled around 15,000 acres in Autauga County, 16,500 acres in Montgomery County, 10,000 acres in Perry County with some 7,000 more to be treated, and 3,650 acres in Wilcox County.

Montgomery, Ala., April 18,— The Alabama Department of Conservation today demanded of State and Federal Agriculture officials and Alabama's Congressional delegation that fire ant treatments be stopped until methods can be devised to safeguard wildlife, song birds, fish and human populations.

By telegrams to the officials concerned, the Alabama Department also called upon fish and wildlife leaders, conservation and Audubon groups in all southeastern states to rally in a solid front to demand of Congressional, State and Federal officials that a comprehensive research program be initiated to determine long-range effects of insecticides.

In support of its action, the Conservation Department cited field observation by Conservation personnel showing that up to three-fourths of the wildlife and song birds may be killed in Alabama acres treated with heptachler to control fire ants.

The Department reported that in every case personnel checking fire ant treatment areas have found dead birds and animals apparently killed by the insecticide used in Alabama. The percentage of kill has ranged up to an estimated 75 percent of the bird and animal population present. Heavy rains immediately following the spraying in some cases apparently have reduced damage to wildlife and birds.

W. H. "Bill" Drinkard, Director of the Alabama Department of Conservation said, "We have not actively opposed the fire ant treatments in some 10 counties up to this time because federal technicians assured us that the chemicals were being applied by means which would safeguard wildlife.

"I am now convinced that a large percentage of valuable wildlife, song birds and fish of the state are being destroyed [fol. 661] by these treatments, and feel personally that there is even critical danger to the citizens of Alabama who may get the insecticides from vegetables, dairy milk, or other everyday necessities of life."

Drinkard emphasized that the estimates of wildlife and bird kill are not based on full scientific studies, but said, "seeing them dead in the field following fire ant treatment is strong enough evidence for me."

Conservation officers, biologists and other personnel involved in visual survey of treatment areas reported never before had they seen the carnage found in these areas.

Hedgerows, fencerows, and small woods areas reeked with the odor of decaying bodies. In many instances, although decaying flesh was obviously present it was impossible to find all of the dead and dying animals and birds.

Whereas, most hunters would agree that it is unusual to find dead wildlife in the field in any numbers because predators remove them soon after death, the Department of Conservation observations appear of even greater significance since there has been no difficulty in finding dead or treated areas.

In the worst case to date, five persons from the Conservation Department spent two hours on April 8 checking hedgerows and small woods on a cultivated and pasture area in Autauga County estimated at 100 acres in size. Although it was impossible to find all the actual kill due to heavy vegetation the following animals and birds were tallied during the two-hour period:

Six rabbits, two of which were alive when found but in such condition they could be picked up from the ground; two which appeared to have died within the past 24 to 48 hours, and two which had been dead for from three to five days; three bobwhite quail; mocking birds, yellow throated warblers, bluejays, red bellied woodpeckers, leopard frogs, white footed mice, cotton rats, barred owl, cardinals, brown thrushes, chipping sparrows, white throated warblers, savannah sparrows, field sparrows, vesper sparrows, opossum and raccoon and 10 remains of birds dead for three to five days.

[fol. 662] The total number from this area was six rabbits, three bobwhite quail, 48 song birds, and one owl, one raccoon and one opossum.

Since the average population of the cottontail rabbit on the type of area checked is normally 10 adults per 100 acres, the number found was 60 percent of the average population. There is no way of knowing how many others were dead but unfound.

The three bobwhite quail were found in a few yards of each other and since a covey of quail up until mating season feed, range and roost together throughout the day, it would seem reasonable to assume that the whole covey could have been wiped out by the heptachlor. Farmers in the areas treated have reported whole coveys found dead on their roosts.

On this and other field trips to fire ant treatment areas, Department personnel have found house cats, owls, opossums and raccoons. These and the birds found would indicate that all types of feeders may have been affected by the treatments, since rabbits feed entirely on vegetation, the birds killed feed principally on the ground, the house cats, owls, and opossum would be expected to feed on dead and sick birds and animals found in the area and raccoons would be expected to eat dead fish and other life found around water areas.

Until the present time the Department of Conservation has had difficulty in getting chemical analysis on dead birds, fish and animals. Heptachlor and the related hydrocarbon chemicals used as insecticides are extremely difficult to detect after they have been taken into the animal body.

However, of one group of birds found dead in an area of Montgomery County where only hand treatments had been made around several farm ponds, all were found by chemical analysis to contain enough heptachlor in the body to induce death. Other tests on wildlife, birds and fish should reveal positive information on how much heptachlor is required to kill each species.

Field observations to date indicate, however, that the two pounds per acre being applied is more than sufficient to kill most birds, fish and wildlife.

[fol. 663] Hunting and fishing are worth millions of dollars in the state of Alabama each year; hence, wildlife and fish should be considered carefully in any statewide program such as fire ant treatment. And, although there is no doubt that insects are a serious threat to the production of agriculture, the songbirds are the greatest natural enemy and control of insects.

The Department of Conservation stated that because of the definite indications that insecticide are causing severe damage to wildlife and songbirds, it appears that all blanket treatment of large land areas should be discontinued until some means is devised to safeguard wildlife, birds and fish from fire ant treatments. Alabama should protect her song birds lest they be destroyed leaving only chemical control as protection against the insect threat.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 71

SOUTH The News Magazine of DIXIE
HUBERT BAUGHN, Editor
503 Massey Building
Birmingham, Alabama
January 21, 1959

Mr. Harold Faber
Day National News Desk
The New York Times
N. Y. N. Y.

Dear Mr. Faber:

Since I assume December checks have been mailed by this time and I have received nothing for that period I'd appreciate your checking on state of Alabama budget story sent during that period. Do not recall whether it was your's or Potter's query but it related to total state budget, propation of state funds, etc. Presumably it was a national roundup.

Please have it added to my January sect. Also, please use this as an expense item for enemployment roundup for Birmingham area which I night pressed yesterday for

Raskin. Since Monday, date of query, was Marse Robert's [fol. 664] birthday and all state offices closed had to do some late checking to meet deadline. Figure personal car expense was $3.00.

Thanks and best regards.

Sincerely,

/s/ JOHN R. CHADWICK

John R. Chadwick
503 Massey Bldg.
Birmingham 3, Ala.

January 24, 1959

Mr. John R. Chadwick
503 Massey Bldg.
Birmingham 3, Alabama

Dear Mr. Chadwick:

Since we didn't run the financial reviews until mid-January, we are putting all those payments on our January payroll, as you suspected. Also, your expenses.

Sincerely,

Harold Faber
Day National News Editor

HF:ha

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 72

January 23, 1959

Mr. Don McKee
The Montgomery Advertiser
Montgomery, Alabama

Dear Mr. McKee:

Claude Sitton tells me you are ready, willing and able to take over as our Montgomery correspondent. Enclosed

is a card to be filled out and returned and a set of rule for our correspondents.

Good luck.

Sincerely,

Harold Faber
Day National News Editor

[fol. 665]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 73

January 7, 1957

Mr. James H. Strickland
Birmingham Post-Herald
Birmingham, Ala.

Dear Mr. Strickland:

I'm sorry, but we already have a correspondent in Birmingham, who has been doing fine work for us, and, of course, we have no plans for making a change.

Sincerely,

Harold Faber
Day National News Editor

LT

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 74

Mar. 25, 1957

Mr. H. D. Cullen
753 Ninth Ave., West
Birmingham 4, Ala.

Dear Mr. Cullen:

I'm sorry, but we have a correspondent in Birmingham, who furnishes all the stories we need.

Very truly yours,

Harold Faber
Day National News Editor

LT

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 75

THE ADVERTISER COMPANY
Montgomery, Alabama
February 21, 1957

[fol. 666]
National News Desk
THE NEW YORK TIMES
New York, New York

Gentlemen:

On December 21, 1956, at the request of Bill McDonald who was at that time your correspondent here, I filed an 800 word roundup on the first day of Montgomery bus integration.

Mr. McDonald advised me at that time that I would be paid directly by you, but to date I have not received payment.

Feeling certain that this is due to oversight rather than any intentional neglect, I call this to your attention.

Very truly yours,

/s/ HY BROWN
Hy Brown

February 24, 1957

Dear Mr. Brown:

A check for that story will be forthcoming, but it may take two or three weeks to get to you because of bookkeeping problems. Thanks for letting me know about it; we certainly would have authorized the payment sooner if someone hadn't neglected it.

Sincerely,

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT No. 76

BEDDOW, EMBRY & BEDDOW
ATTORNEYS AT LAW
204-211 Massey Building
Birmingham 3, Alabama

July 13, 1960

Hon. John R. Matthews
Clerk, Circuit Court of Montgomery County
Court House
Montgomery, Alabama

Re: L. B. Sullivan vs. The New York Times Company, et al.

Dear Mr. Matthews:

[fol. 667] Enclosed herewith please find photostat copies of checks representing payments to M. Castle, Jr., W. McDonald and J. Chadwick for the years 1956 and 1957 by The New York Times.

These are being turned over to you in accordance with the order to produce in the above styled cause. Due to the difficulty of locating these records it was impossible to produce them at the same time as the other documents that have already been filed with you.

Sincerely yours,

BEDDOW, EMBRY & BEDDOW

/s/ RODERICK M. MACLEOD, JR.

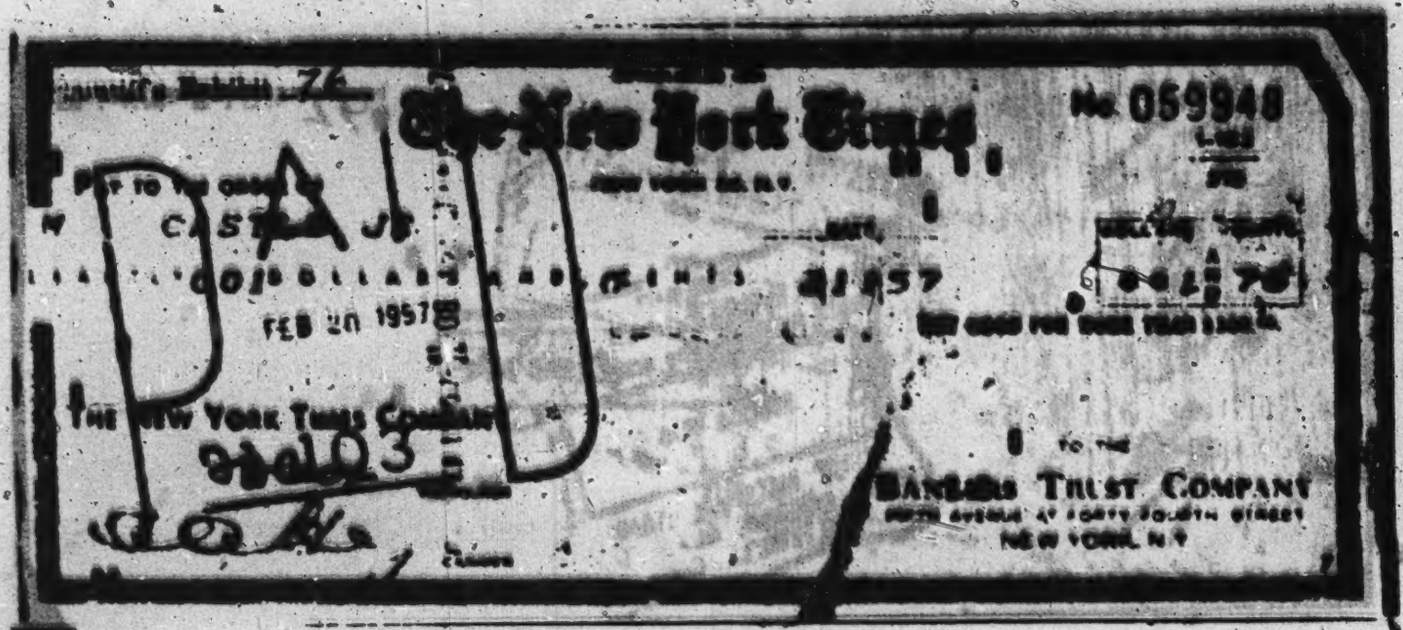
Roderick M. MacLeod, Jr.

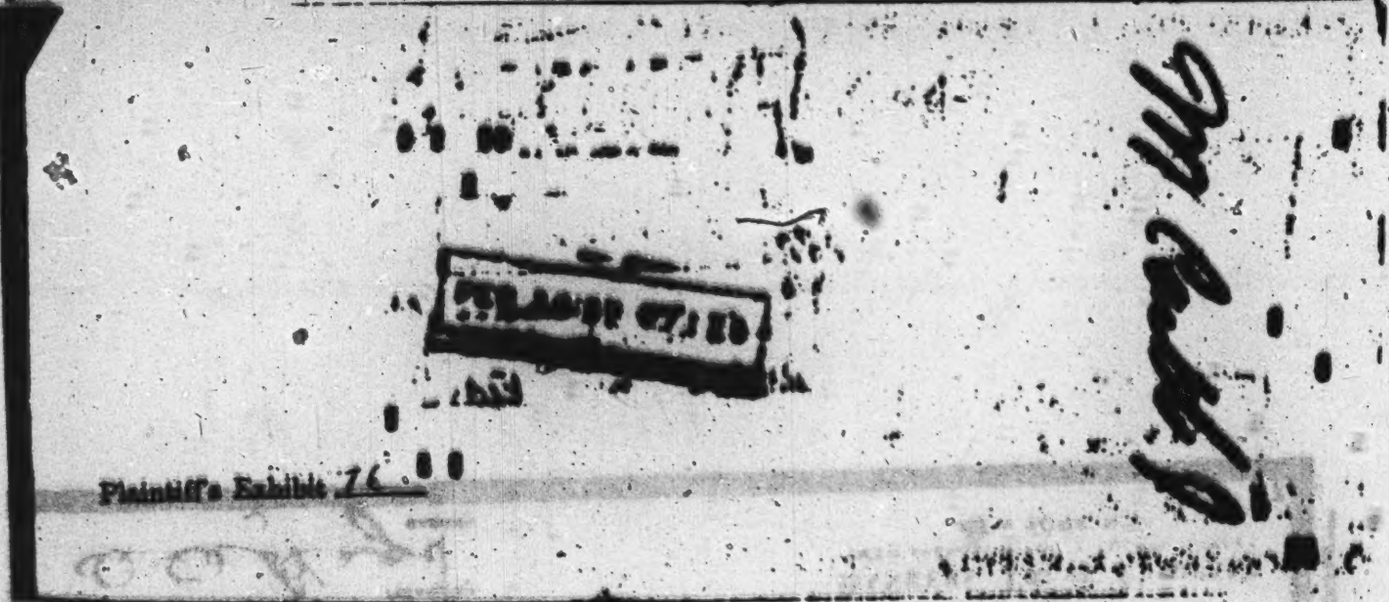
REM jr/mw
Enclosures

Plaintiff's Exhibit No. 76

CHECKS

(See opposite) ☞


Plaintiff's Exhibit 76
The New York Times
No. 059948
PAY TO THE ORDER OF
CASH
$ 41.57
FEB 20 1957
THE NEW YORK TIMES COMPANY
Wald 3
TO THE
BANKERS TRUST COMPANY
PARK AVENUE AT FORTY FOURTH STREET
NEW YORK, N.Y.


Plaintiff's Exhibit 76

1- 667

Plaintiff's Exhibit 16

The New York Times

No 006633

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CASTLE JR

THE NEW YORK TIMES COMPANY

BANKERS TRUST COMPANY
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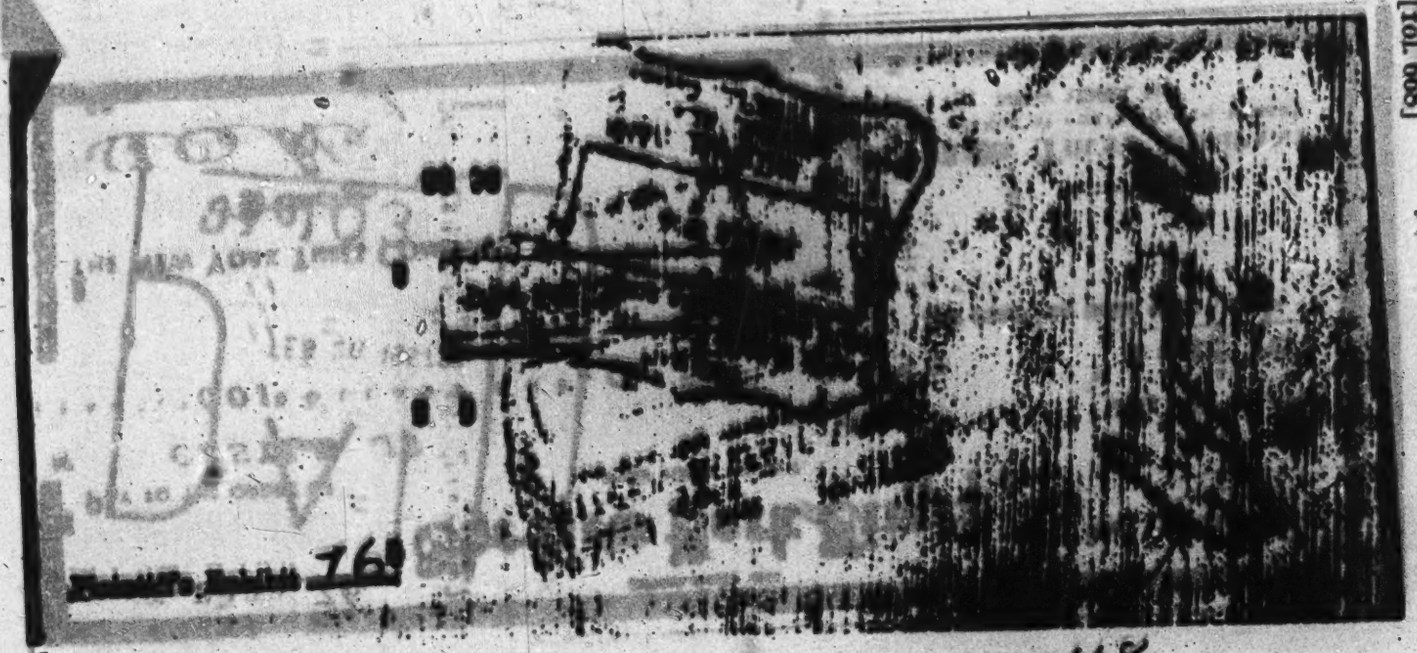

Plaintiff's Exhibit 16

668

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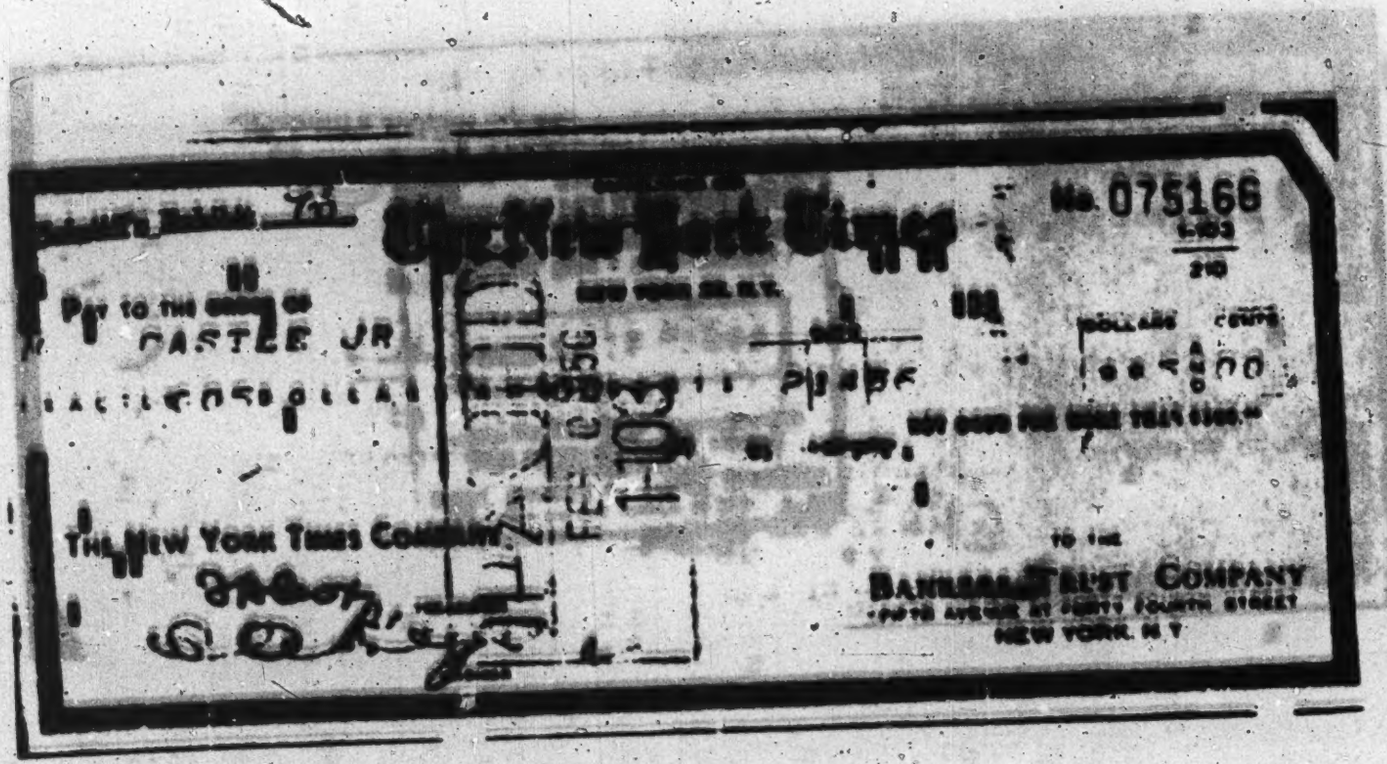
[fol. 668]



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THE NEW YORK TIMES COMPANY

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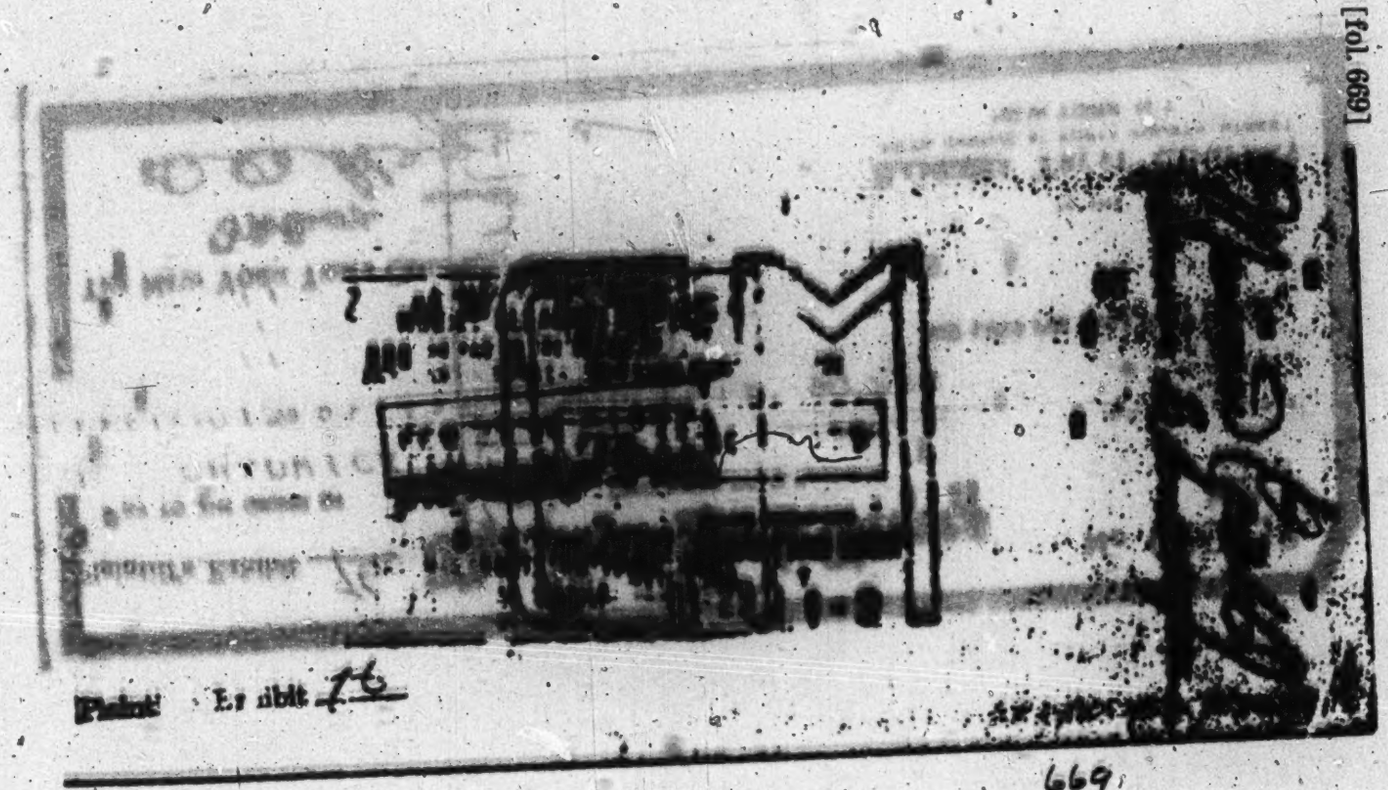

Plaintiff's Exhibit 16

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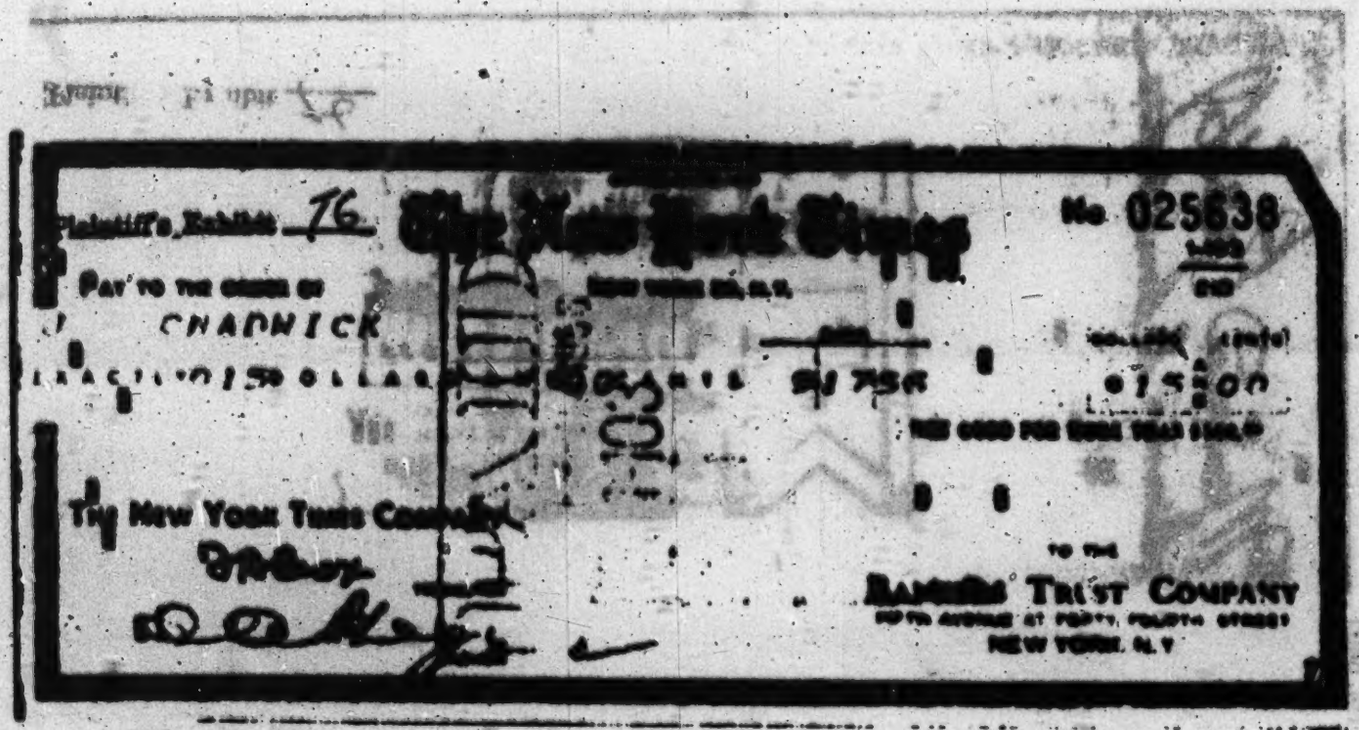
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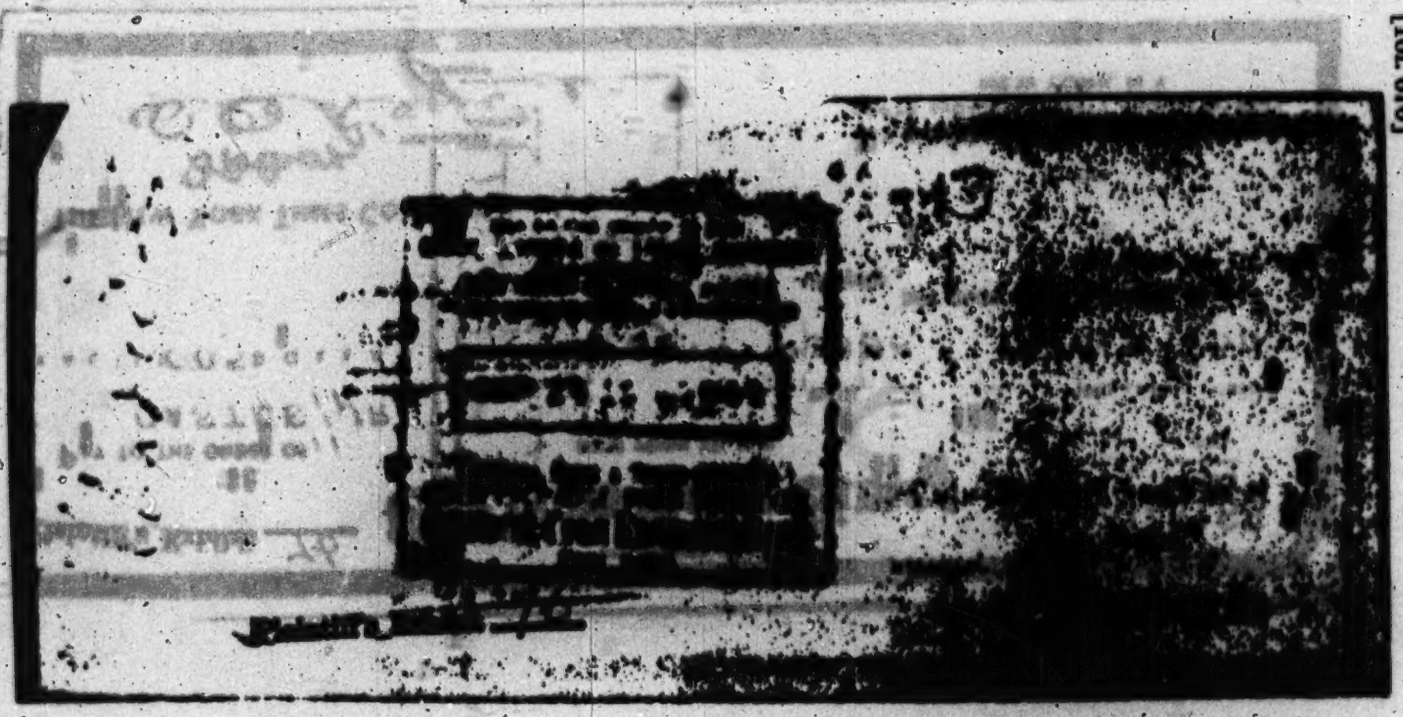
CHADWICK
The New York Times Company
To the
Bankers Trust Company
New York, N.Y.



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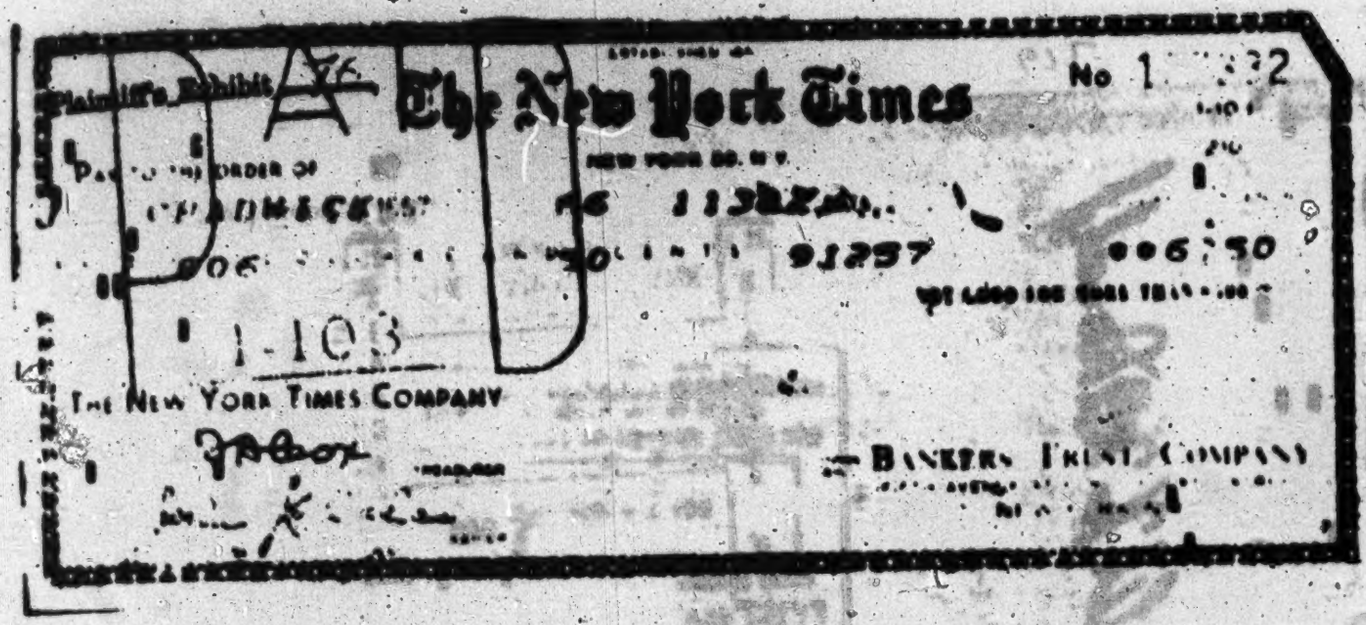
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The New York Times
No 1
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THE NEW YORK TIMES COMPANY
BANKERS TRUST COMPANY

[fol. 671]

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Plaintiff's Exhibit 76

671

Plaintiff's Exhibit 74

The New York Times

No 033356

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NEW YORK, N.Y.

Plaintiff's Exhibit 75

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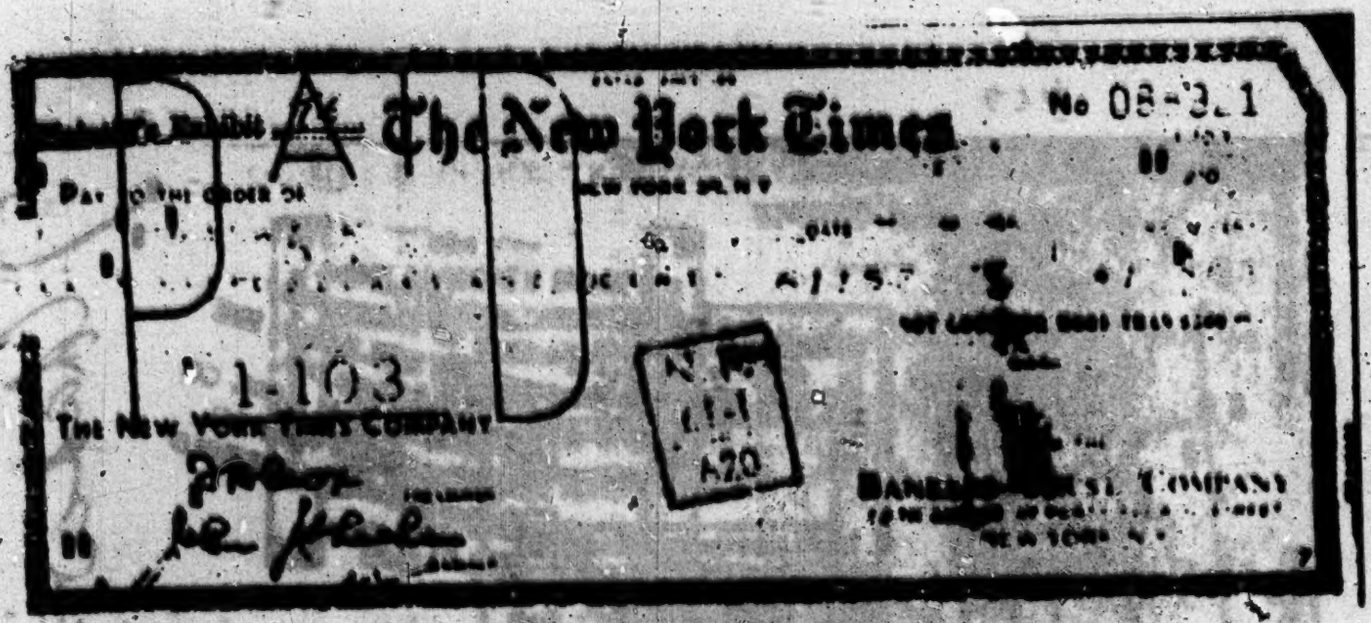
[fol. 672]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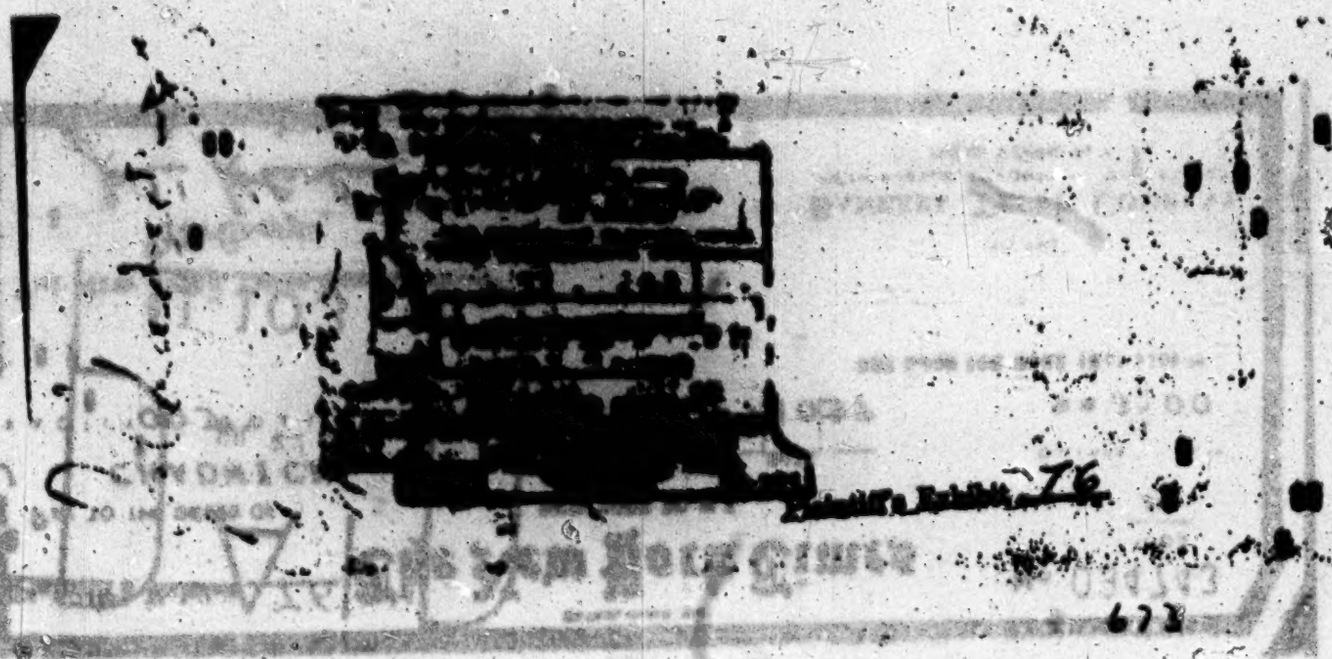
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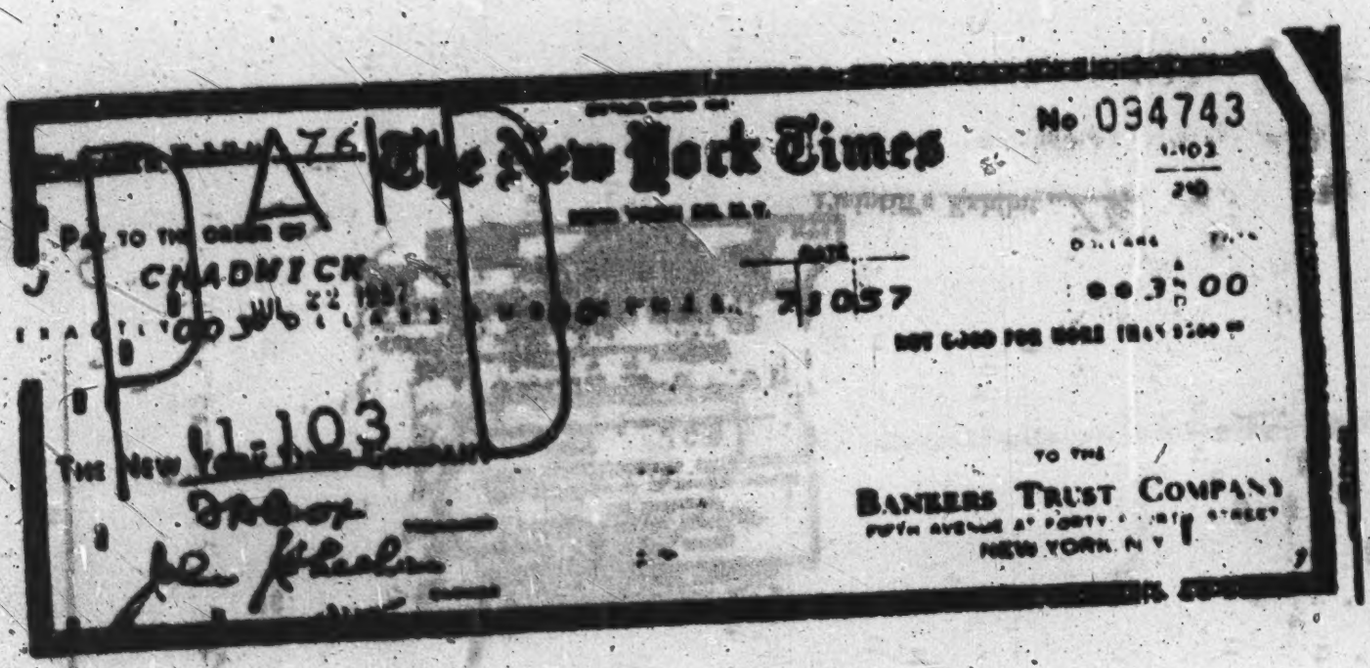

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NEW YORK, N.Y.

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[fol. 674]

Plaintiff's Exhibit 77

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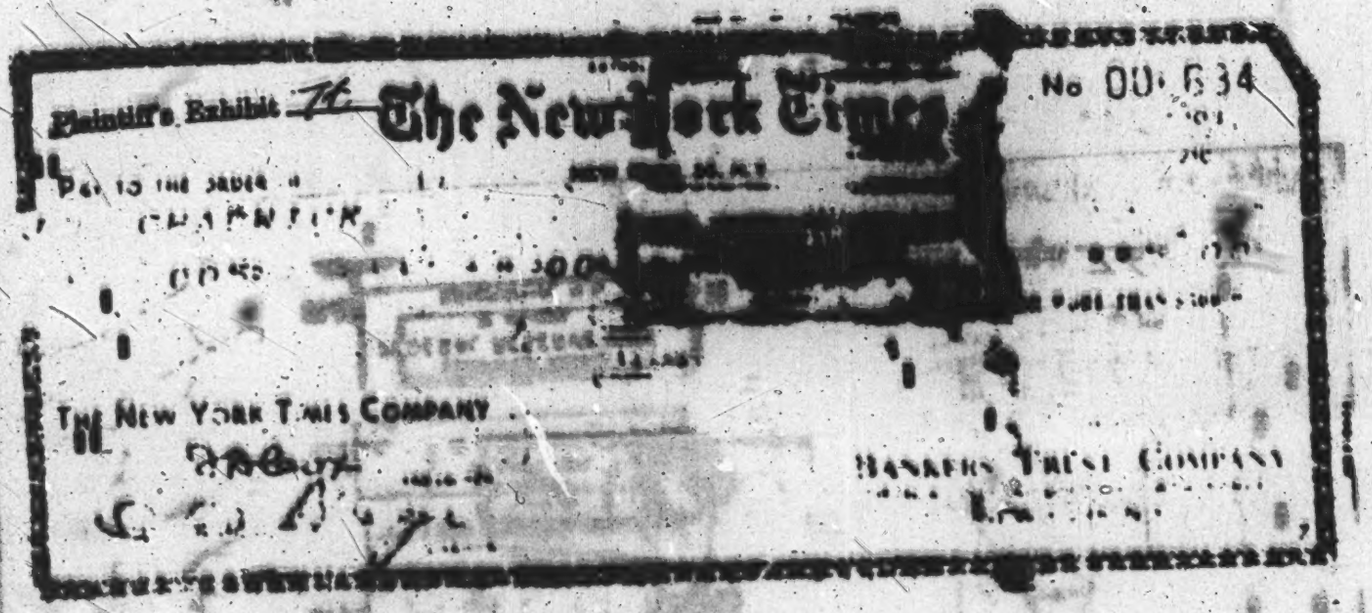
The New York Times

No 052407

BANKERS TRUST COMPANY

[fol. 675]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The New York Times

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THE NEW YORK TIMES COMPANY

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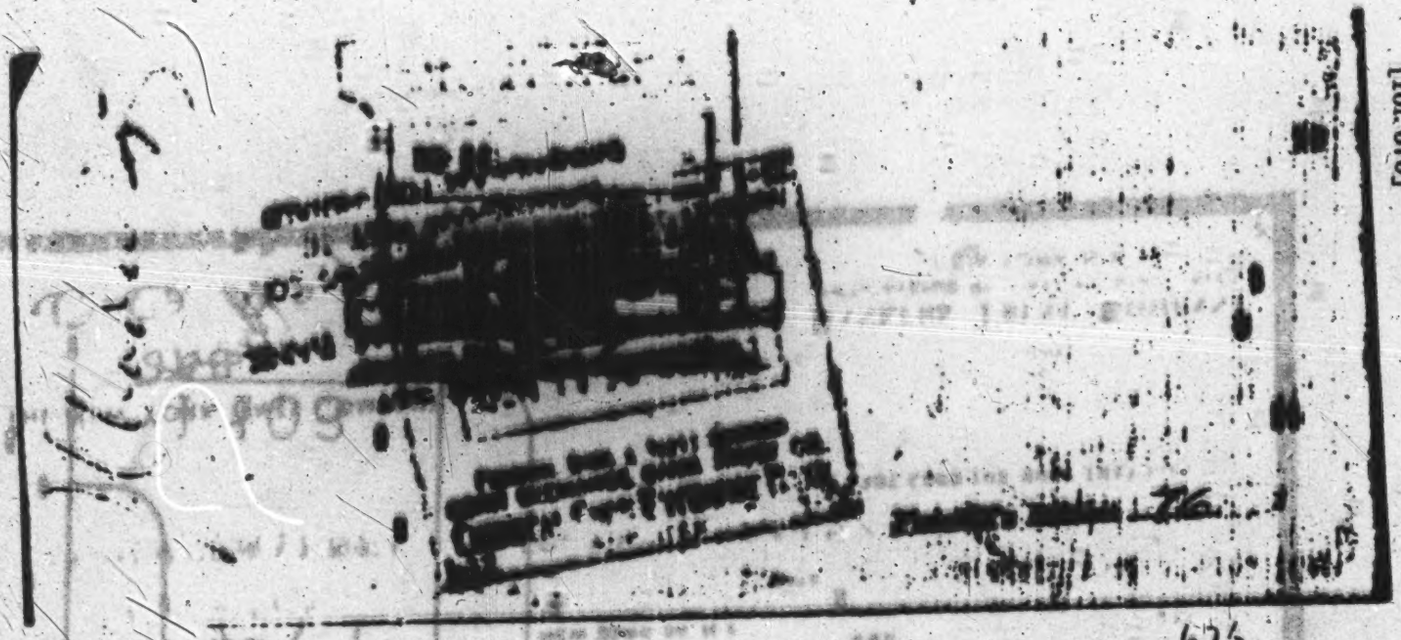

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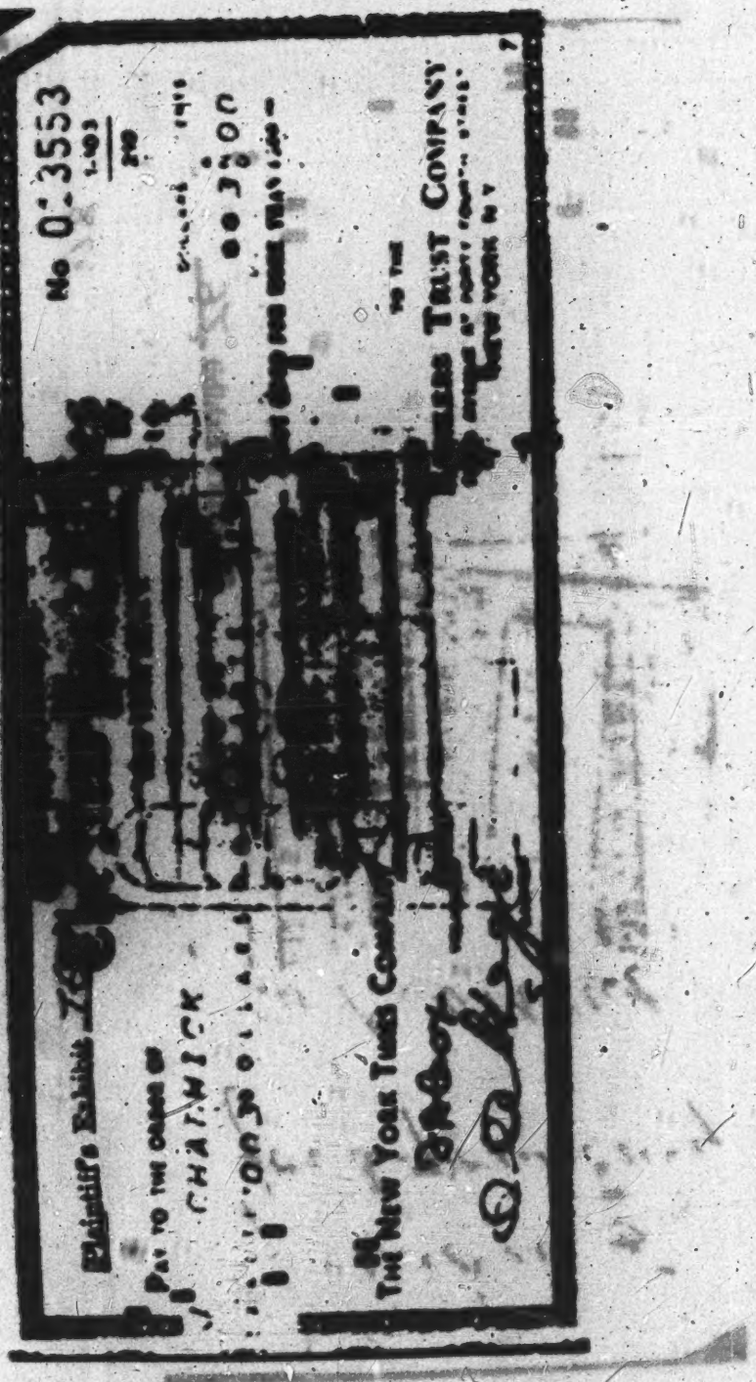

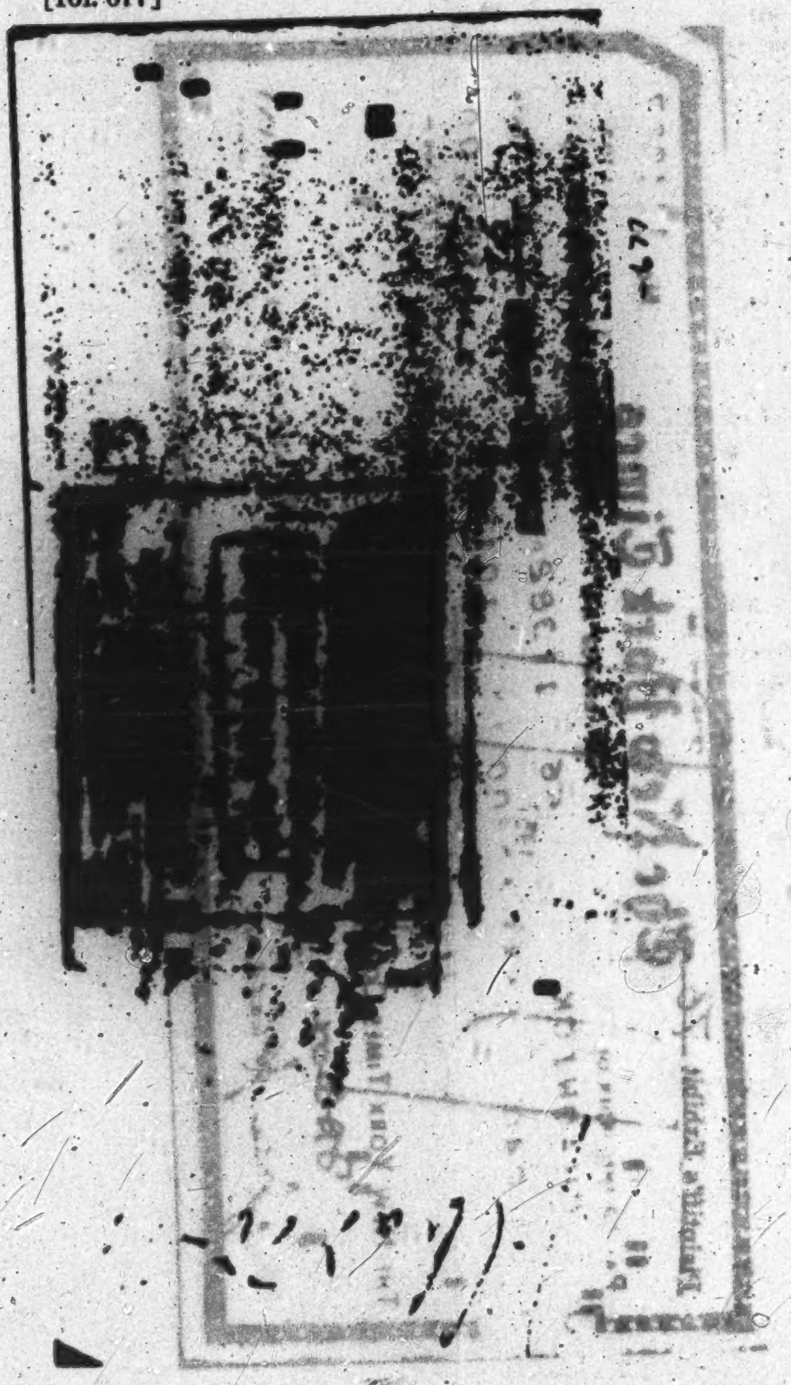

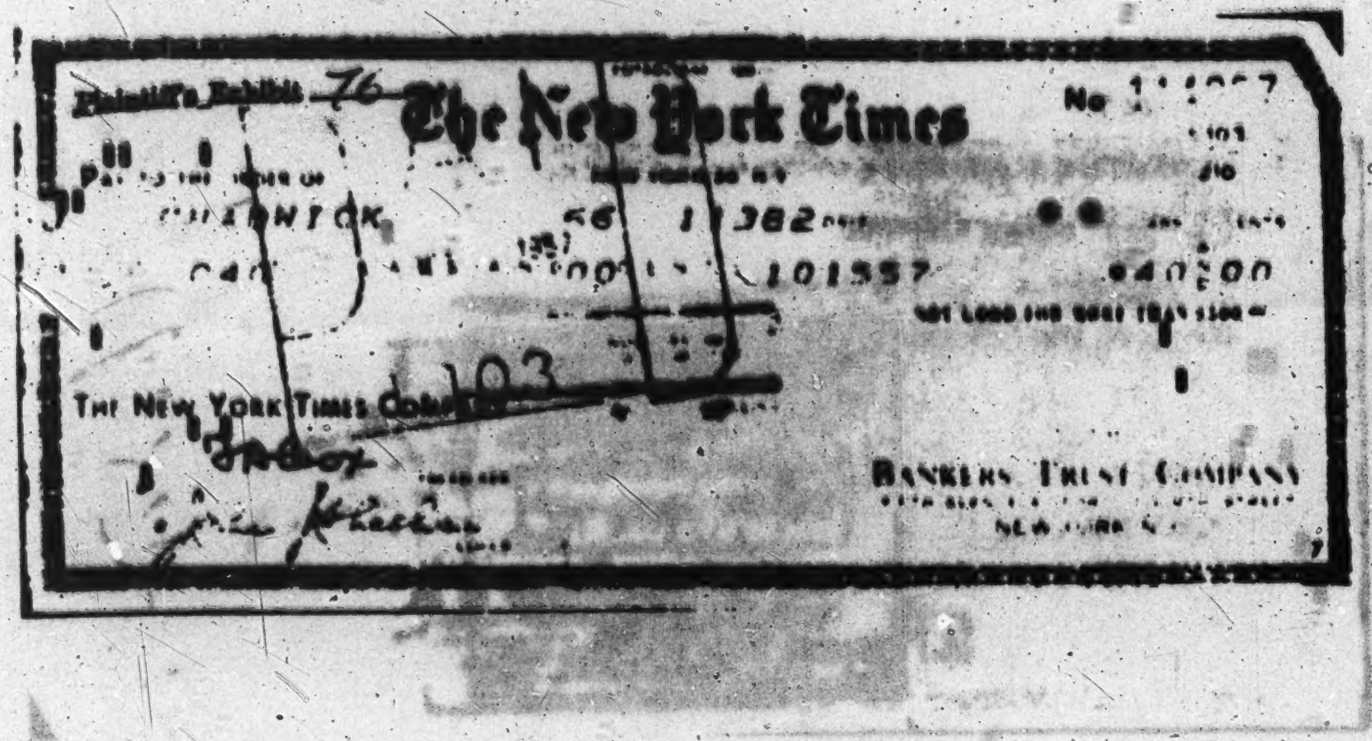
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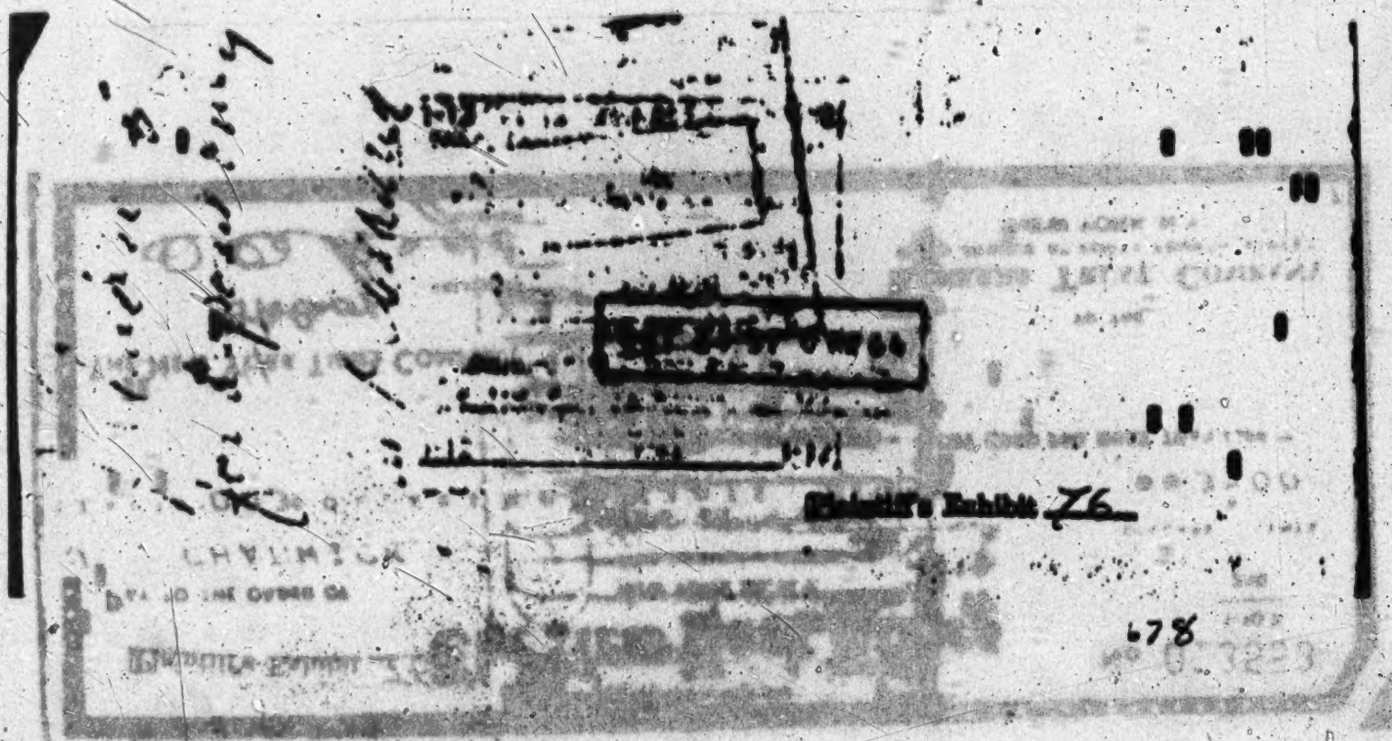
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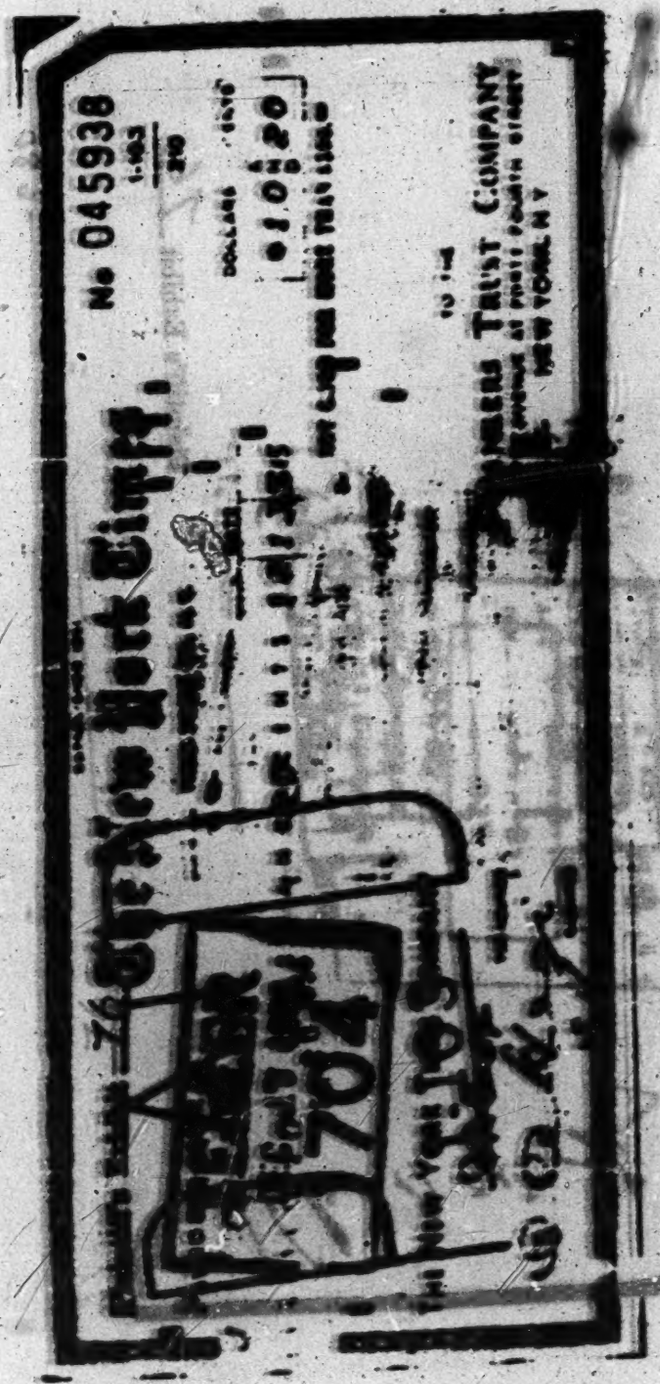

The New York Times
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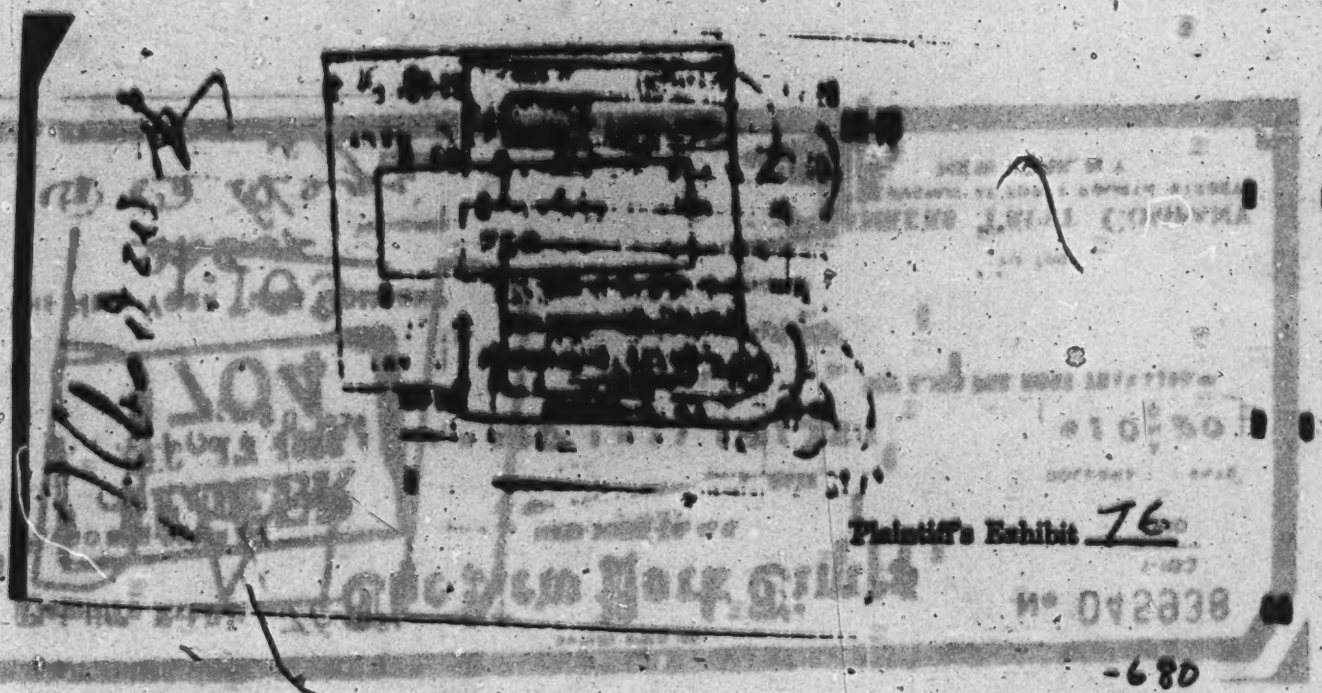
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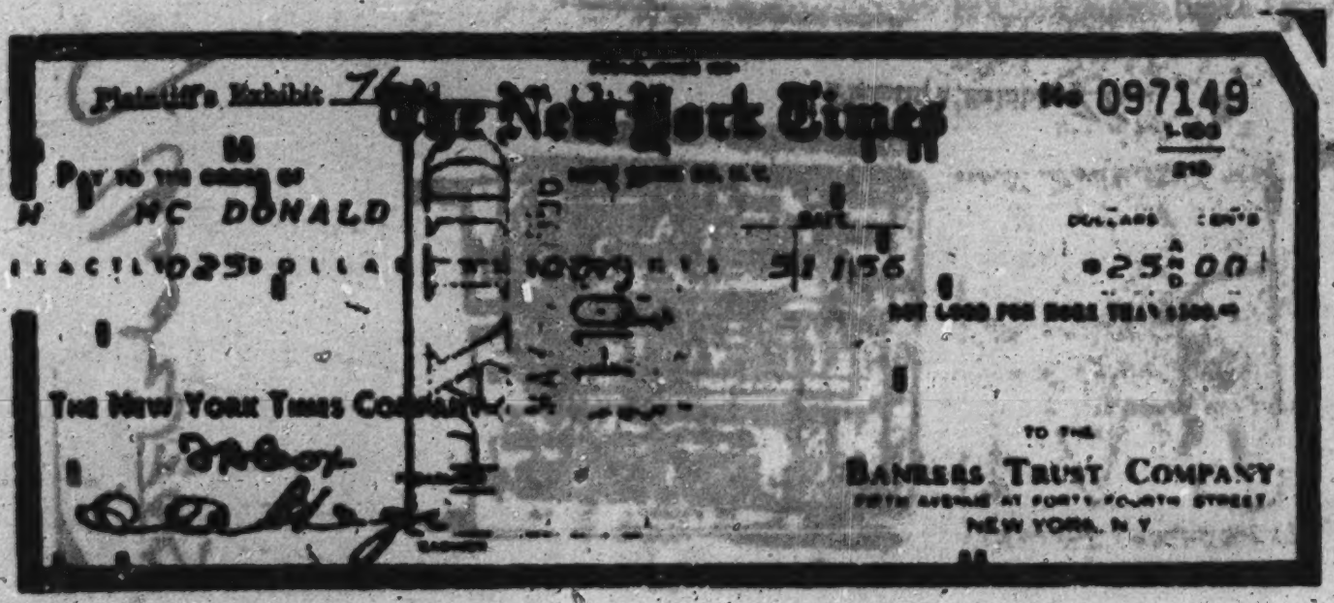
Plaintiff's Exhibit 76

The New York Times

No 097149

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THE NEW YORK TIMES COMPANY

TO THE
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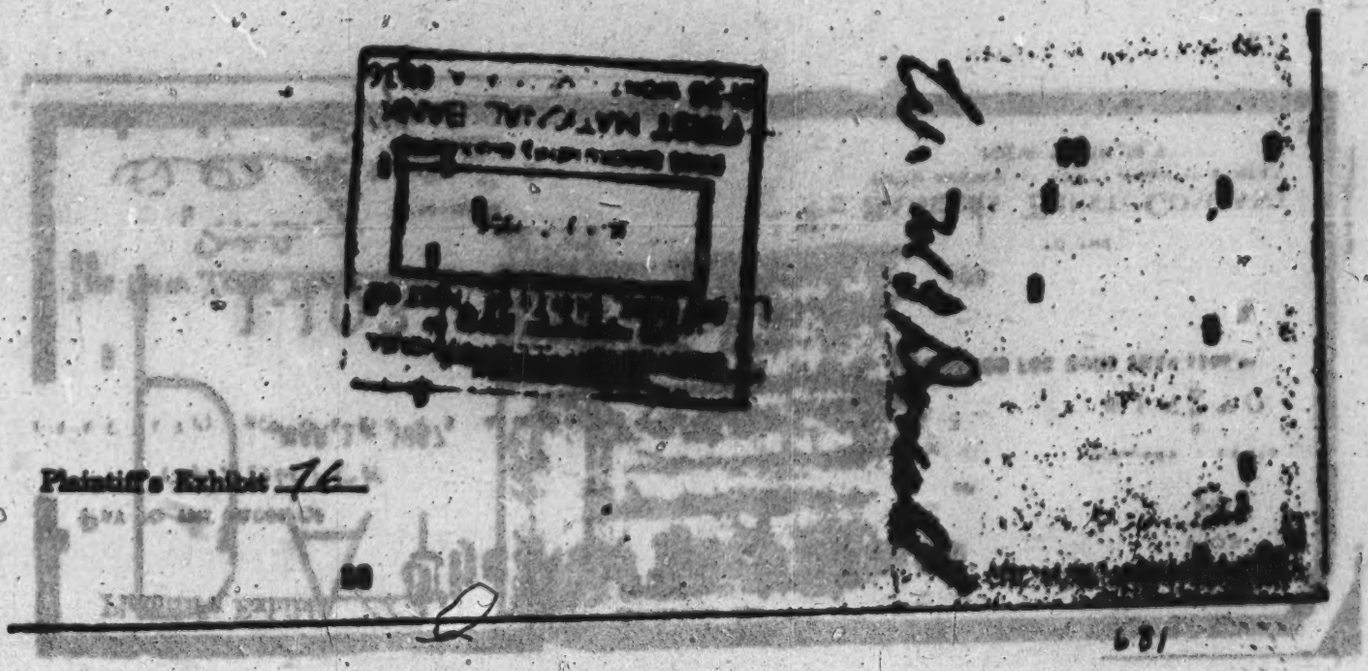
NEW YORK, N.Y.

[fol. 681]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681

[fol. 682]

Plaintiff's Exhibit 16

The New York Times

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NEW YORK, N.Y.

[fol. 683]

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The New York Times

No 097062

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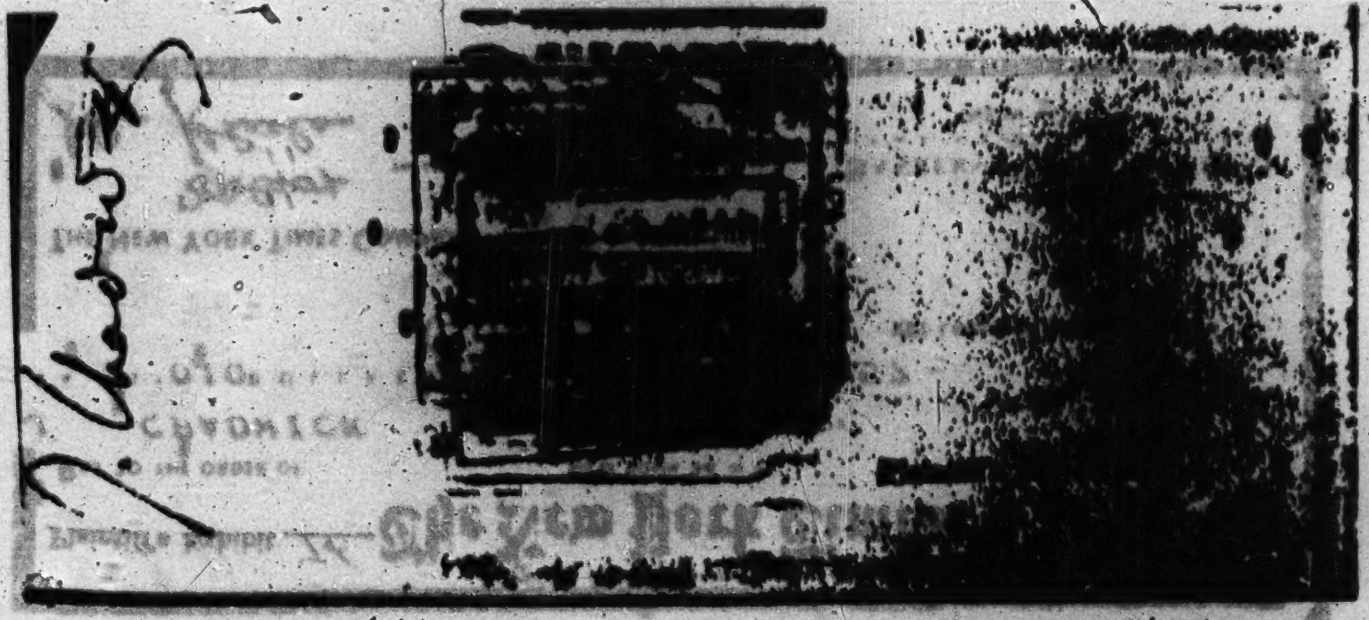

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Plaintiff's Exhibit 76

The New York Times

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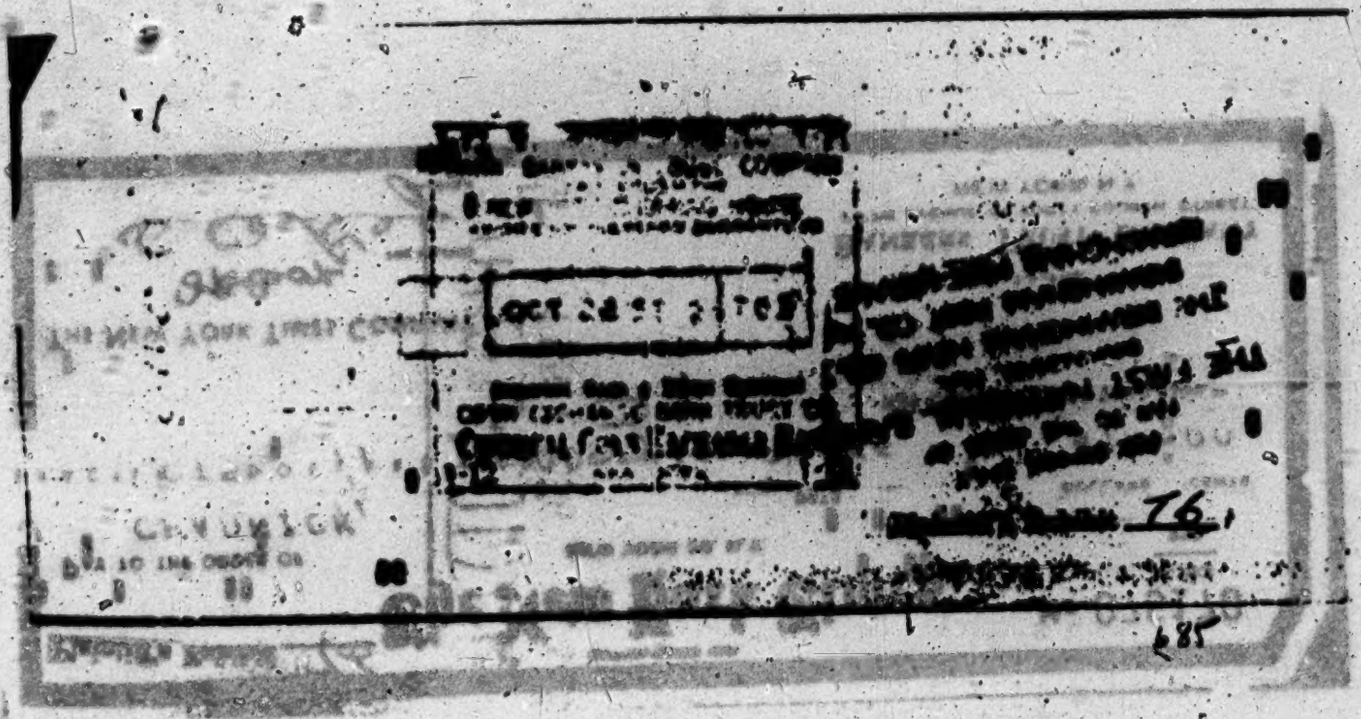
[fol. 685]



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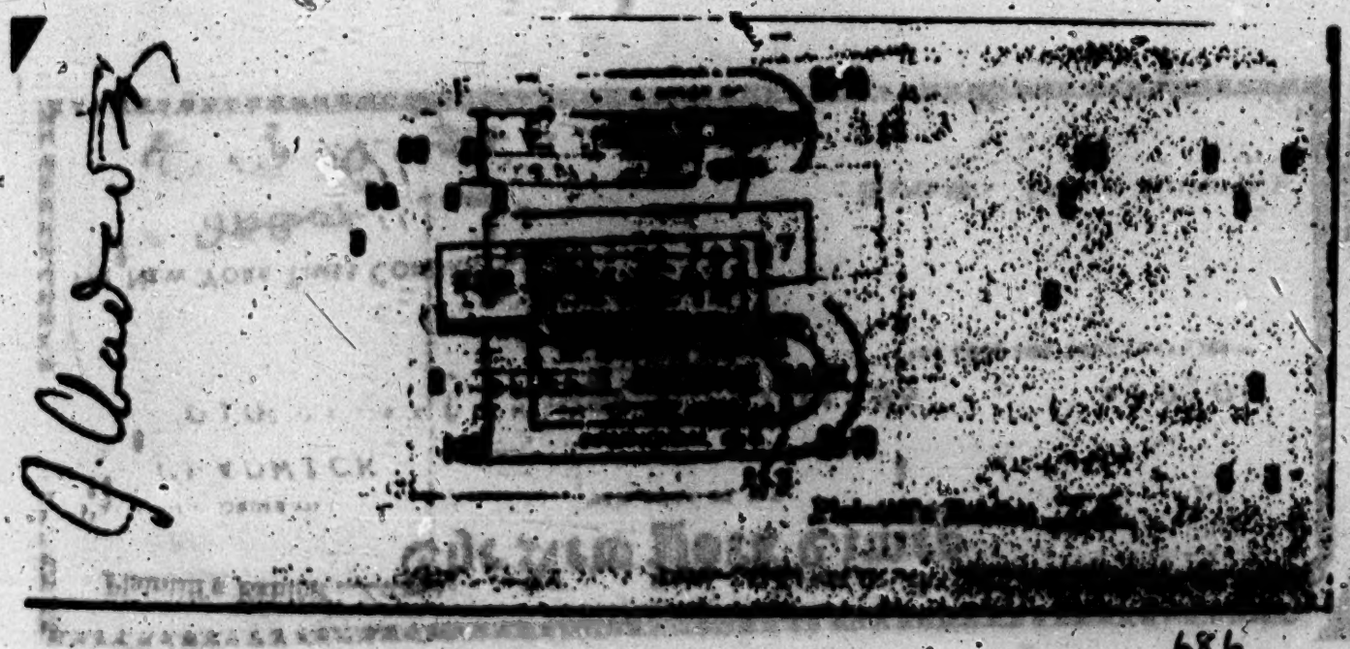

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[fol. 686]

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Plaintiff's Exhibit 76

The New York Times

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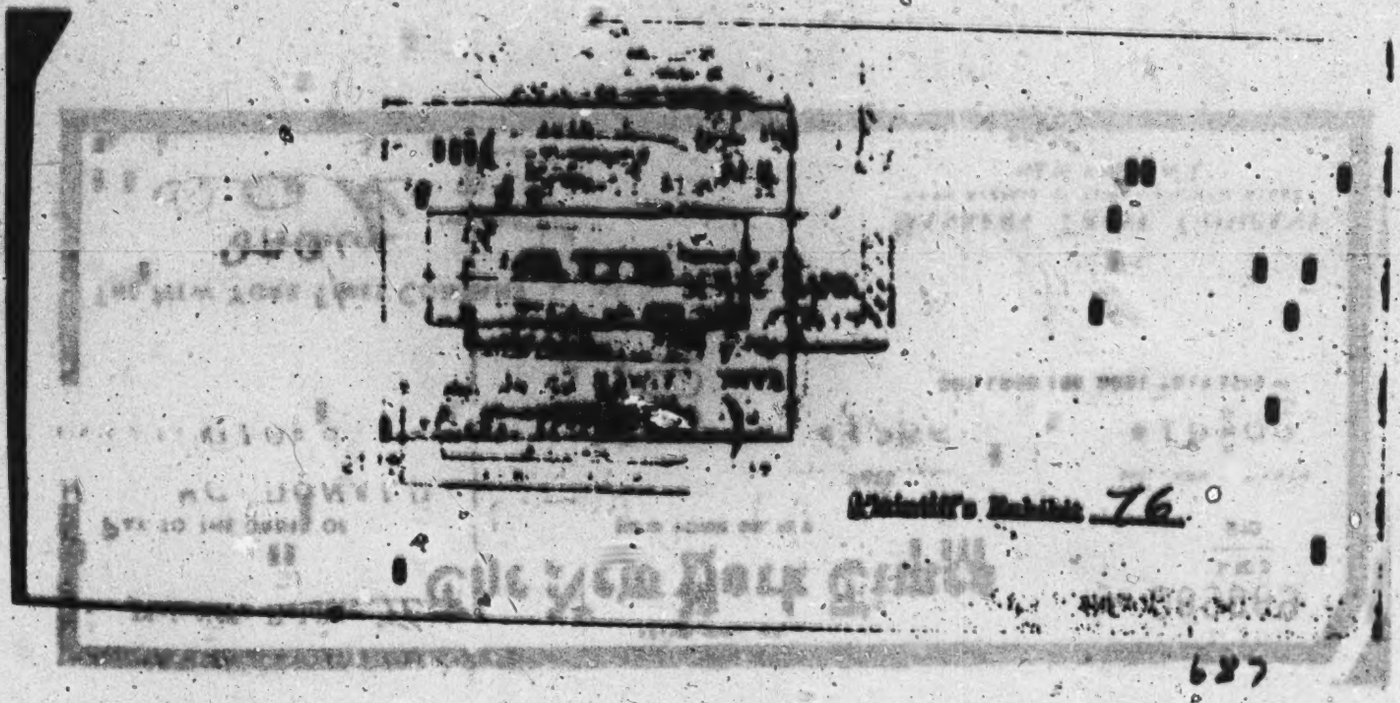

Plaintiff's Exhibit 76

[fol. 687]

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[fol. 688]

No 089869
The New York Times
THE NEW YORK TIMES COMPANY
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Plaintiff's Exhibit 75

The New York Times

No. 019396

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BANKERS TRUST COMPANY

NEW YORK, N.Y.

[fol. 688]

Plaintiff's Exhibit 76

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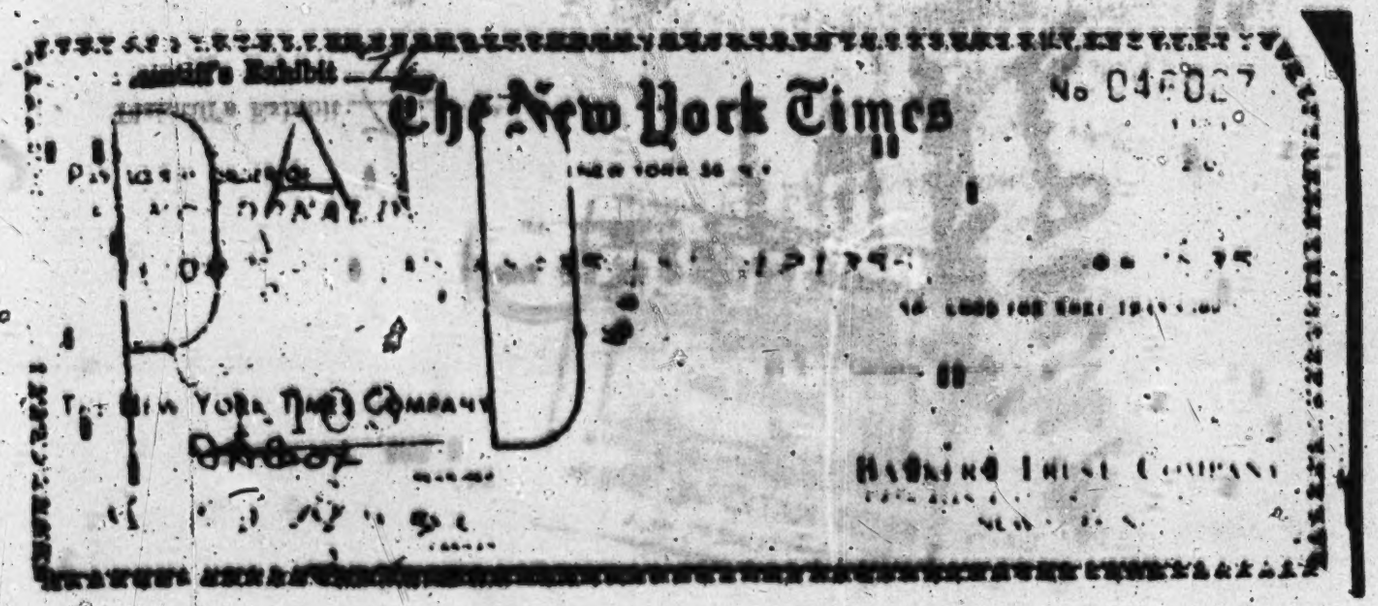
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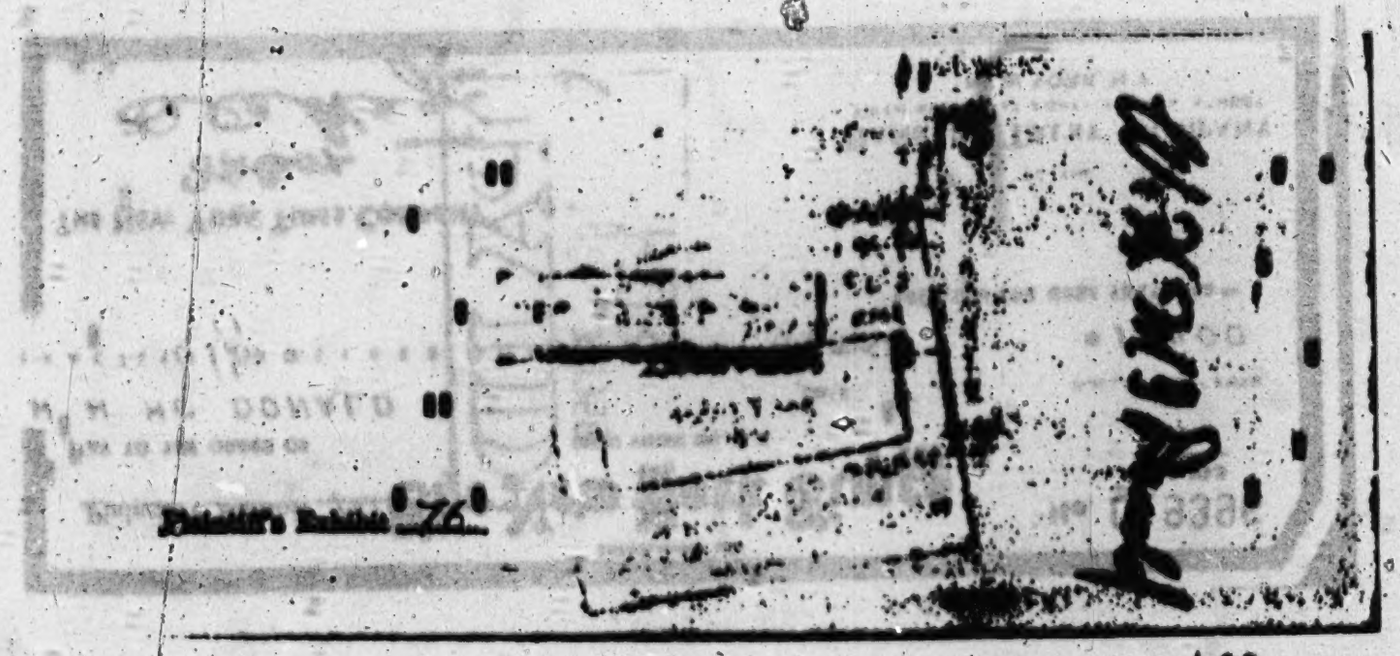
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Plaintiff's Exhibit 76

The New York Times

No. 075249

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THE NEW YORK TIMES COMPANY

TO THE
BANKERS TRUST COMPANY
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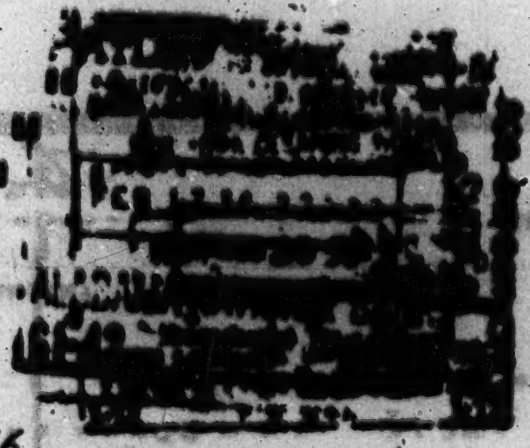

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[fol. 691]

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The New York Times

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The New York Times

No 052487

1-103

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The Manufacturers Trust Company

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FIFTH AVENUE AT FORTY FOURTH STREET

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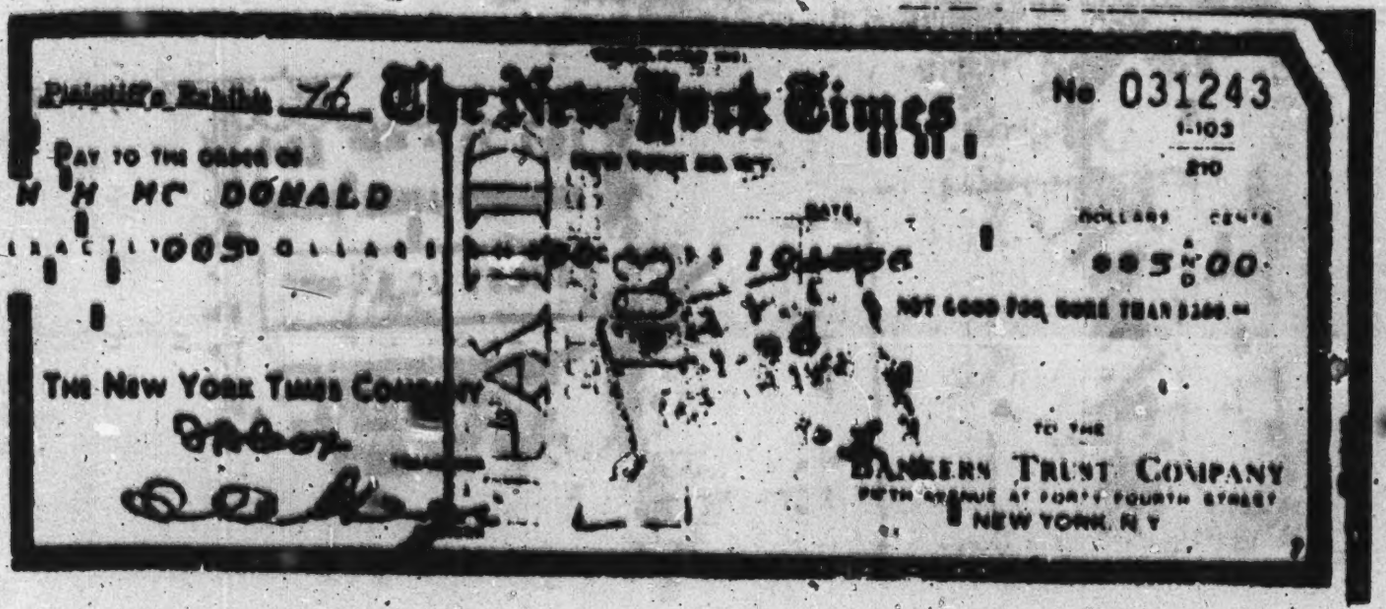
Plaintiff's Exhibit 76

[fol. 693]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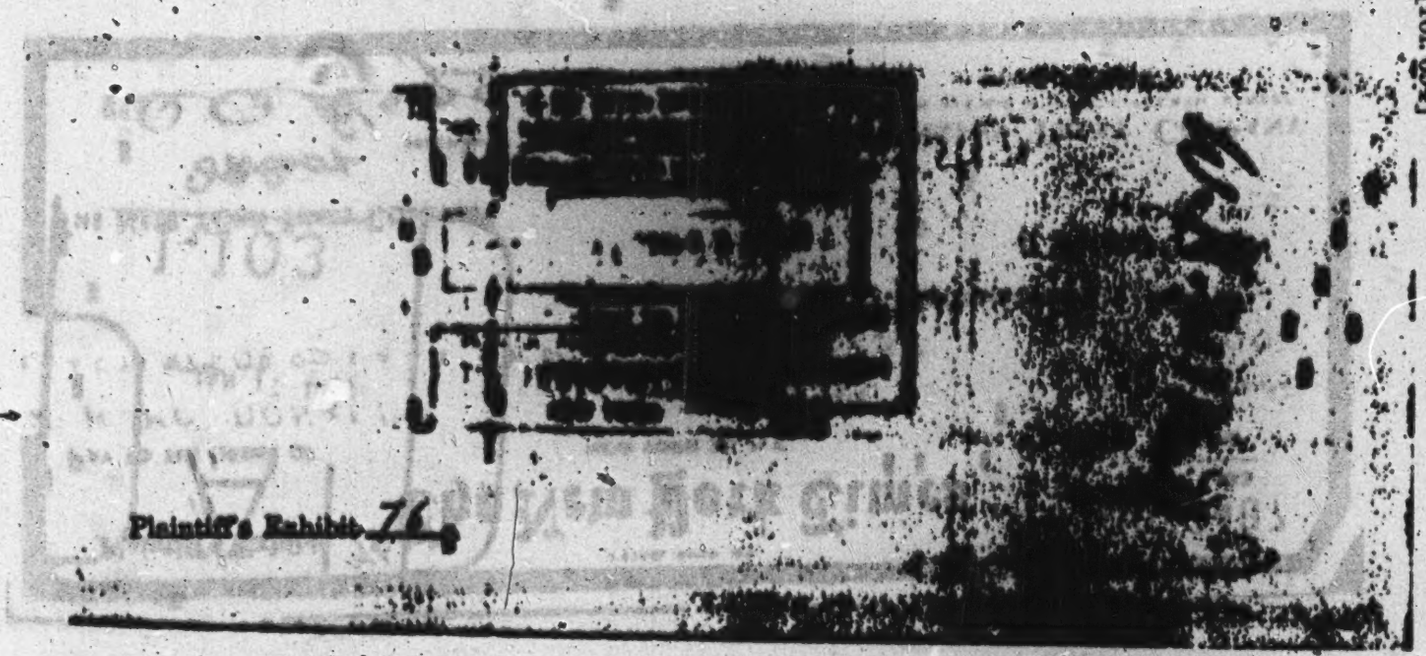
Plaintiff's Exhibit 76

1338 [fol. 694]

694

Vol. 695]
IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLAINTIFF'S EXHIBIT 77

THE NEW YORK TIMES, SUNDAY, MARCH 11, 1956

READ THIS TUESDAY IN THE NEW YORK TIMES

WHAT THE SOUTH IS DOING ABOUT DESEGRATION, a penetrating and factual survey by 10 top reporters of The New York Times—written after five weeks of intensive investigation among whites and Negroes in 17 States and the District of Columbia.

How far has racial integration progressed in Southern schools and colleges?

What is the status of integration today?

What is the feeling about it among Southern whites and Southern Negroes?

What are the prospects for integration in the future?

These are questions that vitally concern you, wherever you live . . . . because racial integration is one of the most important problems facing our country today. You cannot escape its effects in your everyday life and living.

Here are the facts about integration . . . the real story behind the daily headlines. Here are the facts about what is happening and is likely to happen . . . . and how both whites and Negroes are reacting to it. To get this story 10 top reporters of The New York Times spent five weeks in 17 Southern and Southwestern States and the District of Columbia.

They talked with people in big cities. They talked with folks in crossroads hamlets. They tramped out to farms and plantations. They talked with Negro citizens. They talked with white citizens. They talked on the record and off the record. They talked with public officials, ministers, merchants, industry executives, social leaders, educators, labor leaders, factory and farm workers, doctors, lawyers,

editors, NAACP workers and White Citizen Council members.

They heard loud voices condemn desegregation. They heard quiet voices report the surprising progress integra- [fol. 696] tion has already made. They listened to what whites and Negroes told them . . . . and then they looked to see for themselves. They got the facts. They captured the mood of people, whites and Negroes alike, caught in one of the most significant social changes in our history.

Their survey adds up to perhaps the most ambitious sociological reporting assignments ever undertaken. You will want to read every word of it in a special 8-page section that you can take out and save . . . . Tuesday in The New York Times.

BE SURE TUESDAY TO READ
THE NEW YORK TIMES

"ALL THE NEWS THAT'S FIT TO PRINT"

HERE IS THE NEW YORK TIMES TEAM THAT BRINGS YOU THE FACTS ABOUT DESEGRATION

(10 Photographs Attached to Original)

RUSH

DPR - COLLECT

Page 1

April 14 - 1960

To Mr. Robert Garst, asst. managing editer
The New York Times
Times Square
New York 36, N.Y.

Re info request:

Alabama State College sources and Dr. H. Council Trenholm, president, and Dr. Levi Watkins, director of the business office which issues meal tickets, controls [redacted] feed and dormitory accommodations.

Dr. Trenholm: "Absolutely no truth to the charge that the dining hall was 'padlocked' to 'starve students into submission.' I don't understand through what source, malicious or otherwise, that statement came."

Trenholm further refutes reference to "entire student body refusing to re-register." Factually incorrect.

Dr. Watkins (personal interview and he has records to back up this):

Gave [redacted] background to situation: Quarter ended on Friday March 4, pre-registration [redacted] was Mar. 2-5. Standard procedure for students to register officially with business office by March 10. Under standard rules students required to have meal tickets (actually privilege card for both meals and derms), which are valid by quarter. Temporary cards issued up through March 9; no further cards issued except on basis of actual registration.

more

Plaintiff's Exhibit 78

[fol. 698]

Plaintiff's Exhibit 78

1831

"Meal courtesies were extended to all (repeat all) students through Sunday, March 6." (Two days after [redacted] winter quarter ended.)

"The business office remained open all day Saturday and Sunday (March 5 & 6) to enable students to either register or make arrangements for privilege card."

As to "entire student body" refusing to re-register as protest, college records show 1,182 of the approximately 1,900 students had pre-registered prior to the quarter's end March 4.

On Monday (Mar. 7), first day of the supposed protest, 214 students followed through on registration; on Tuesday, 194 more did so and by Wednesday a total of 603 had taken steps toward permanent registration.

Dr. Watkins said emphatically the dining hall was never "padlocked" --except for being locked up at night as usual. No students who wanted meals were refused; those who had no [redacted] privilege cards could have bought meals.

"A number of students, who during the week simply stayed on and took no steps to register, -- these people didn't eat as far as the dining hall was considered (If students don't register, they aren't considered students.)

"It is [redacted] conceivable that some students who for their own reasons did not choose to re-register or to request temporary campus living accomodations prior to their decision to register, were without college meal service," said Watkins.

"The college presumed to serve those students who had actually registered for the quarter or who requested living accommodations, including meal service, which were available

Plaintiff's Exhibit: 78

with or without the actual payment of fees and tuition prior to the deadline," he continued.

There were about 75 students who never re-registered but who were given both meal and room privileges, Watkins said. Any number of witnesses can be produced to prove the falsity of the "padlock" statement, he said.

As to expulsion of students, this was on grounds of their insubordination in refusing to stop demonstrations on orders of Trenholm and other officials---this is the official stand of the college.

As to truckloads of police, etc., city police entered the campus only after a mob of students had threatened the building-and-grounds custodian (NEGRO) who tried to prevent an on-campus demonstration on orders of the president. A college police officer fired his pistol into the air in an effort to quiet the mob before a passing city patrol car intervened. The police were actually seeing that orders of the officials were carried out.

As to King's police record here:

Montgomery Police files show two arrests on Jan. 26, 1956, he was arrested for speeding, released on bond, convicted and fined $10 which he appealed and later paid, and on Sept. 3, 1958, he was arrested for loitering, released on his own bond, fined $14 which was paid by the police commissioner. In neither case was he jailed.

[fol. 700]

Plaintiff's Exhibit 78

1333

[redacted] Page 4

King has been twice arrested by Montgomery County sheriff's officers: On Feb. 22, 1956, for violation of state boycott law, and on Feb. 29, 1960, [redacted] on charge of income tax return falsification. Total of 4 arrests.

As to demonstrations, on Sunday March 6, several hundred Negroes, including some students, attempted march to capitol in direct [redacted] violation of police [redacted] warning against it; police proceeding on basis of preserving order, ie., averting race riot, well within legal rights. Contrary to statements, city-county-state police averted riot and saved lives no doubt of Negroes who at one point appealed to State Public Safety Director for instructions and advice on how to leave the scene. Not one Negro was arrested during near-riot or attempted demonstration [redacted]

-30-

DON McKEE
MONTGOMERY, ALA.

[redacted]

1334 [fol. 701]

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Plaintiff's Exhibit 78

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The New York Times

NEW YORK, 36, N.Y.

No. 006460

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NEW YORK, N.Y.

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ESTABLISHED 1851

The New York Times

NEW YORK, 36, N.Y.

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NEW YORK, N.Y.

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[fol. 702]

PLAINTIFF'S EXHIBIT 79

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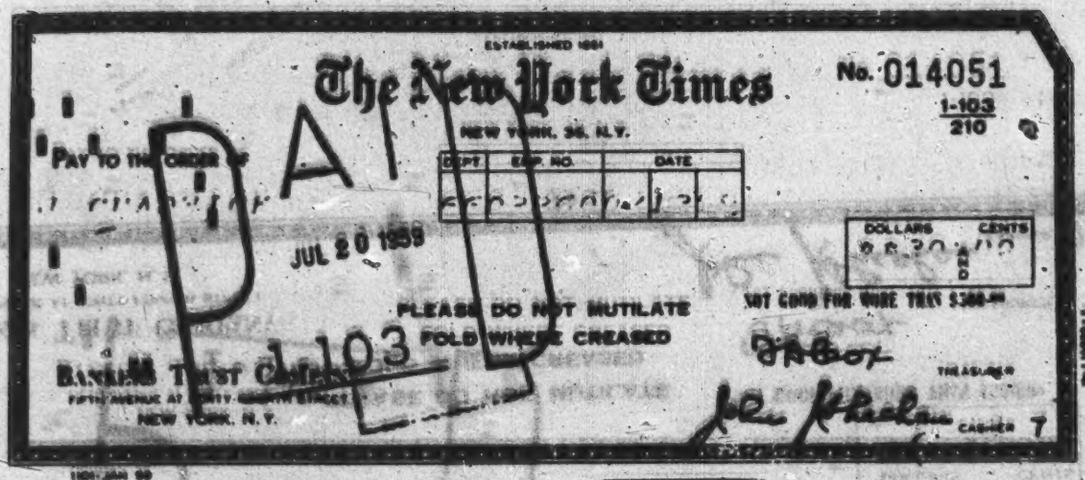
The New York Times
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PLEASE DO NOT MUTILATE
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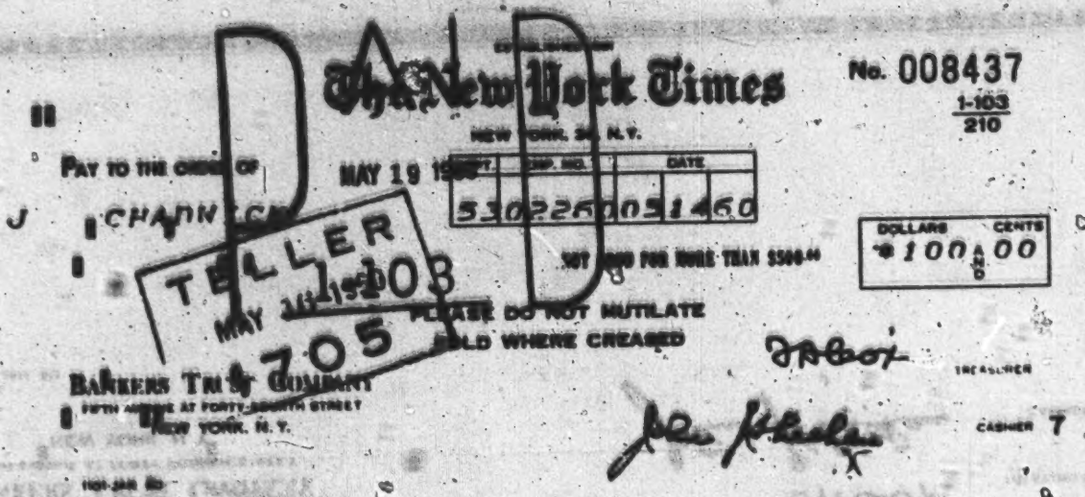
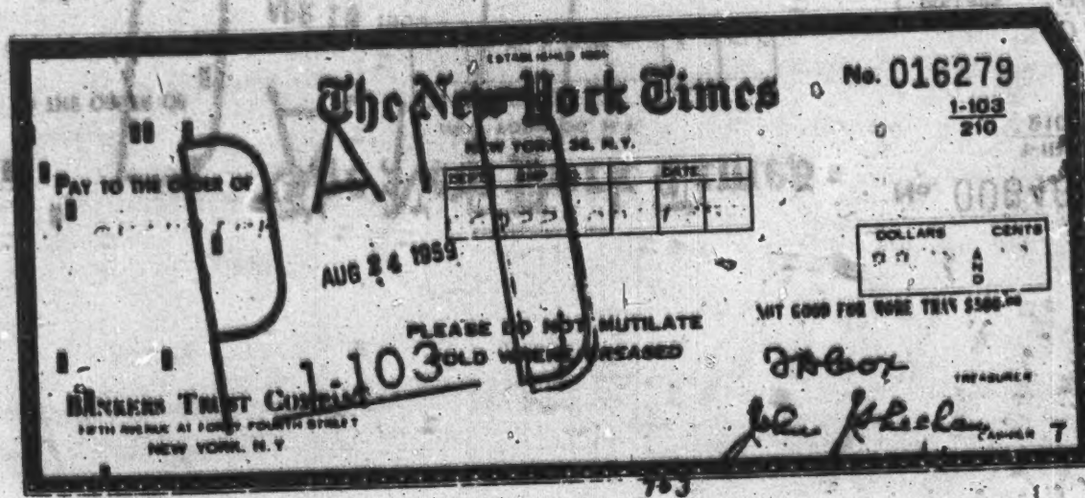
NOT GOOD FOR MORE THAN $500.00
TREASURER
CASHIER 7
PAID
1-103


The New York Times
No. 008437
1-103
210
PAY TO THE ORDER OF
MAY 19 1959
DEPT
EMP. NO.
DATE
530226005460
DOLLARS
CENTS
100 00
NOT GOOD FOR MORE THAN $500.00
PLEASE DO NOT MUTILATE
FOLD WHERE CREASED
TREASURER
CASHIER 7
TELLER
MAY 19 1959
705
PAID
1-103


The New York Times
No. 016279
1-103
210
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DEPT
EMP. NO.
DATE
AUG 24 1959
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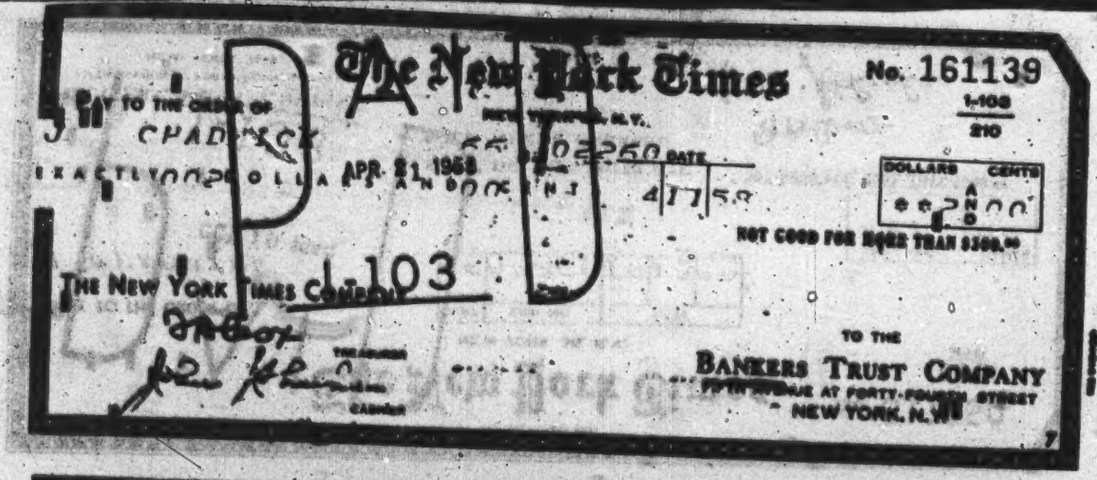
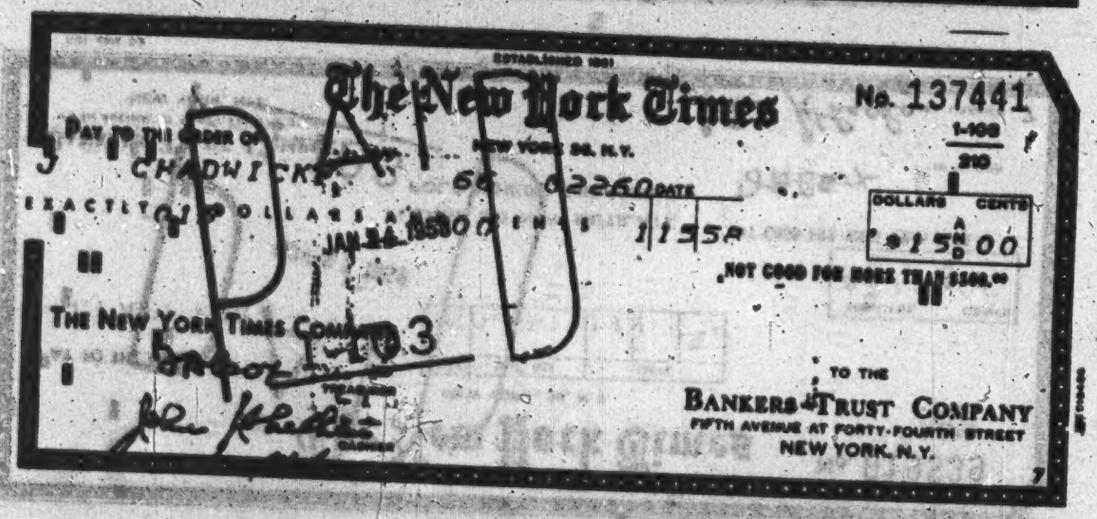
NOT GOOD FOR MORE THAN $500.00
TREASURER
CASHIER 7
PAID
1-103



The New York Times
No. 161139
1-103
210
PAY TO THE ORDER OF
CHADWICK
EXACTLY [illegible] DOLLARS AND [illegible] CENTS
APR 21 1958
DATE
DOLLARS CENTS
AND
NOT GOOD FOR MORE THAN $300.00
THE NEW YORK TIMES COMPANY
1-103
TREASURER
CASHIER
TO THE
BANKERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.



The New York Times
No. 137441
1-103
210
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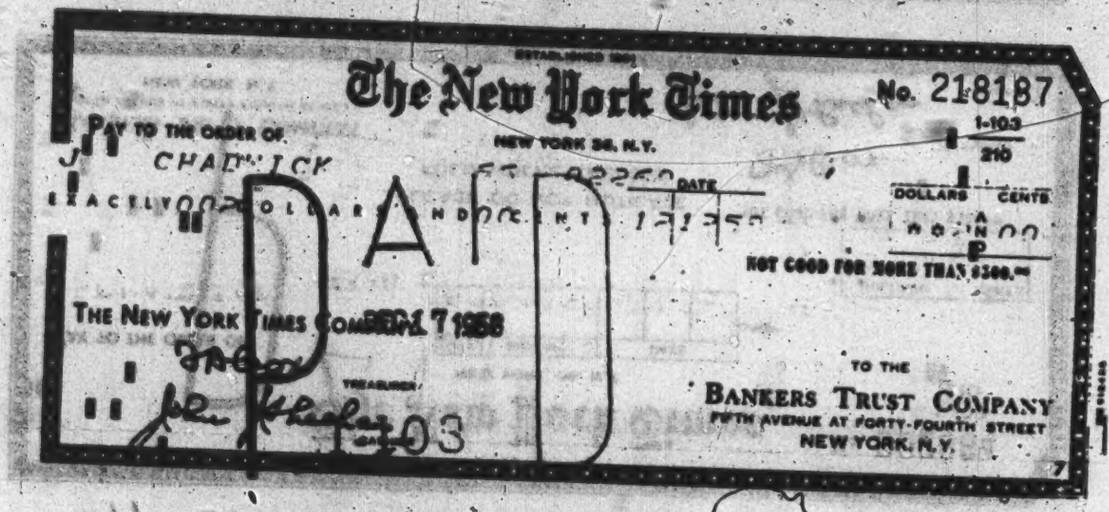
JAN 24 1958
DATE
DOLLARS CENTS
AND
NOT GOOD FOR MORE THAN $300.00
THE NEW YORK TIMES COMPANY
1-103
TREASURER
CASHIER
TO THE
BANKERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.



The New York Times
No. 218187
1-103
210
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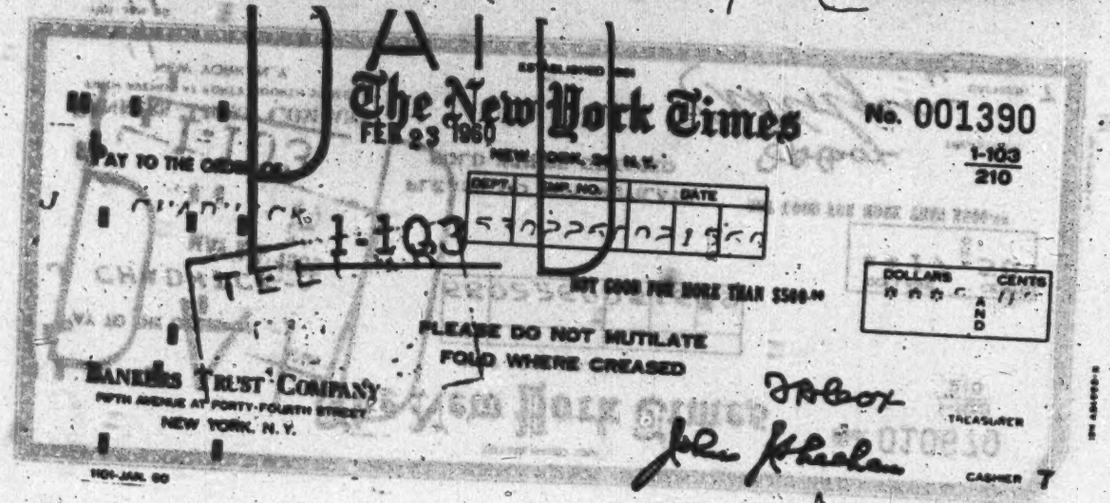
DEC 17 1958
DATE
DOLLARS CENTS
AND
NOT GOOD FOR MORE THAN $300.00
THE NEW YORK TIMES COMPANY
1-103
TREASURER
CASHIER
TO THE
BANKERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.



The New York Times
FEB 23 1960
No. 001390
1-103
210
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CHADWICK
1-103
DEPT.
DEP. NO.
DATE
DOLLARS CENTS
AND
NOT GOOD FOR MORE THAN $300.00
PLEASE DO NOT MUTILATE
FOLD WHERE CREASED
BANKERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.
TREASURER
CASHIER

[fol 704]

1337

704

The New York Times
No. 010670
1-103
210
PAID
1-103
PLEASE DO NOT MUTILATE
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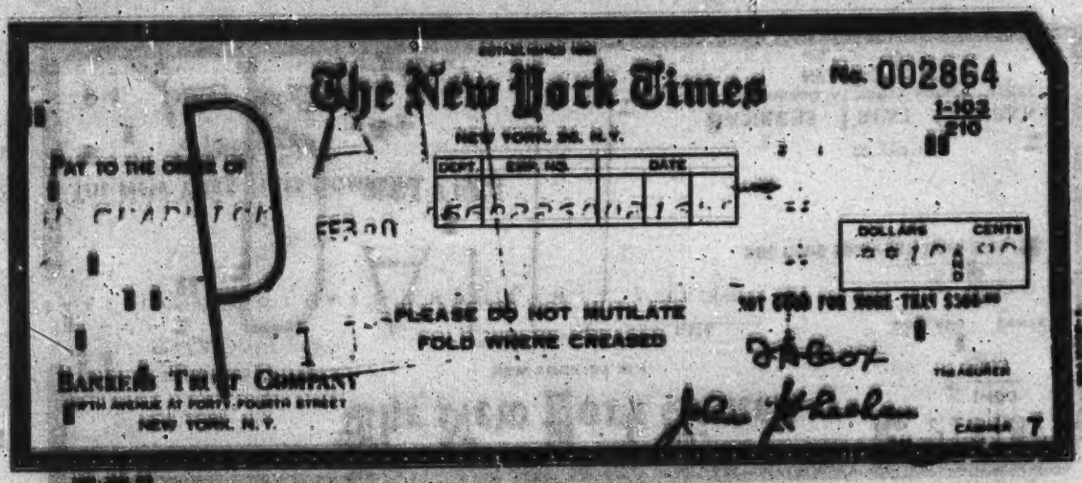
BANKERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N. Y.
TREASURER
CASHIER 7


The New York Times
No. 002864
1-103
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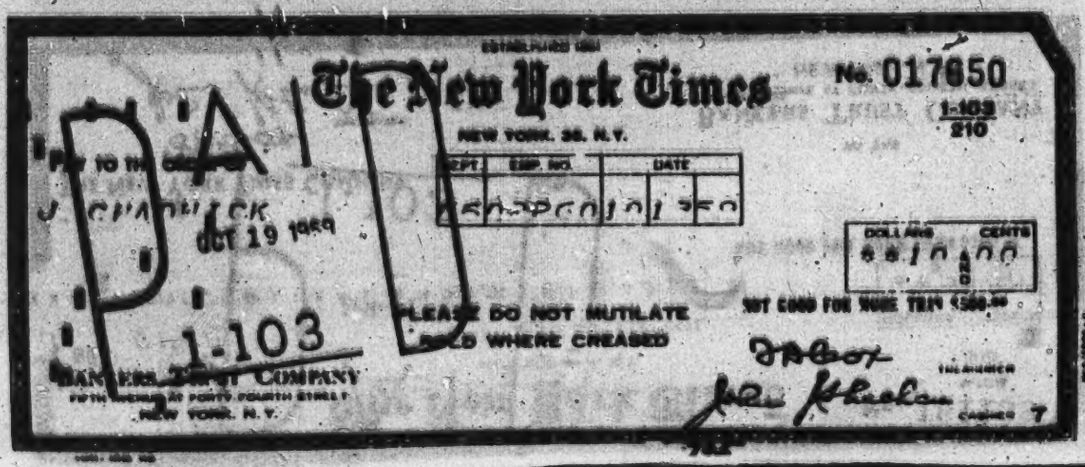
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N. Y.
TREASURER
CASHIER 7

The New York Times
No. 019539
1-103
210
PAID
NOV 2 5 1959
PLEASE DO NOT MUTILATE
FOLD WHERE CREASED
TREASURER
CASHIER 7


The New York Times
No. 017650
1-103
210
PAID
OCT 19 1959
1-103
PLEASE DO NOT MUTILATE
FOLD WHERE CREASED
BANKERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N. Y.
TREASURER
CASHIER 7

[fols. 706-709]

CLERK'S NOTE RE PLAINTIFF'S EXHIBIT No. 80

The 13 checks in Exhibit 80 are duplicates of the 13 checks in Exhibit 79 appearing at side folios 702-705, printed pages 1335-1338, supra and are not being reprinted here.

[fols. 710-713]

CLERK'S NOTE RE PLAINTIFF'S EXHIBIT No. 81

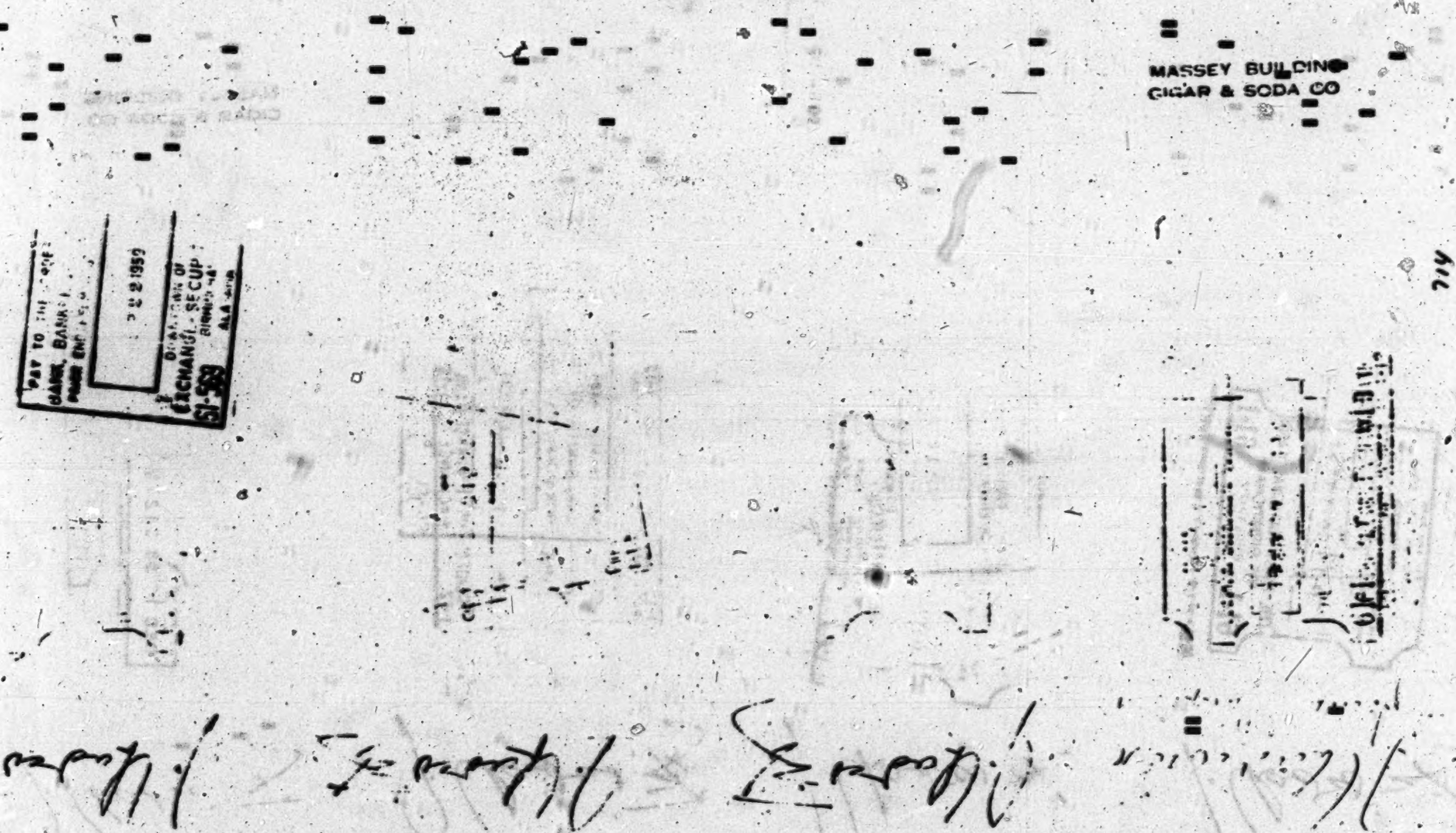
The 13 checks in Exhibit 81 are duplicates of the 13 checks in Exhibit 79 appearing at side folios 702-705, printed pages 1335-1338, supra and are not being reprinted here.

PLAINTIFF'S EXHIBIT 82

(See opposite) ☞

[fol. 714]

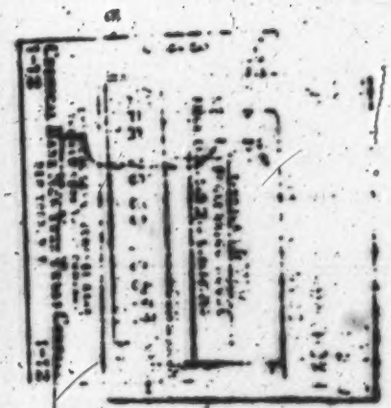
PLAINTIFF'S EXHIBIT 82

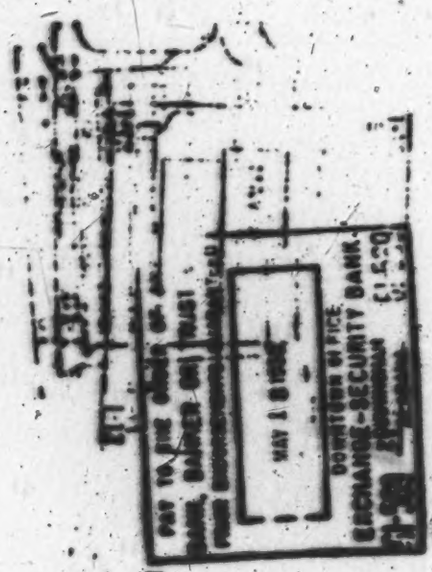


[fol. 715]

MASSEY BUILDING
CIGAR & SODA CO.
THE FIRST NATIONAL BANK OF BIRMINGHAM
61-1
61-1

[fol. 716]





[fols. 717-722]

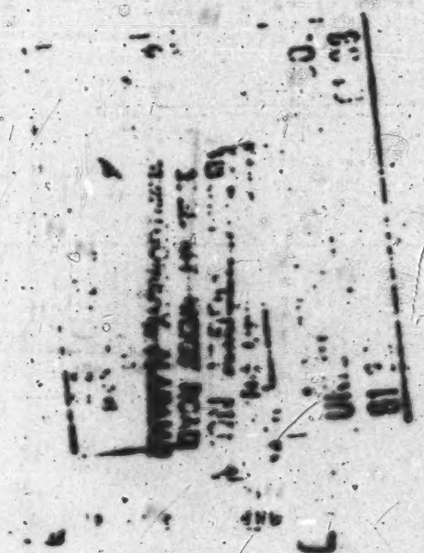
CLERK'S NOTE RE PLAINTIFF'S EXHIBITS NOS. 83 AND 84

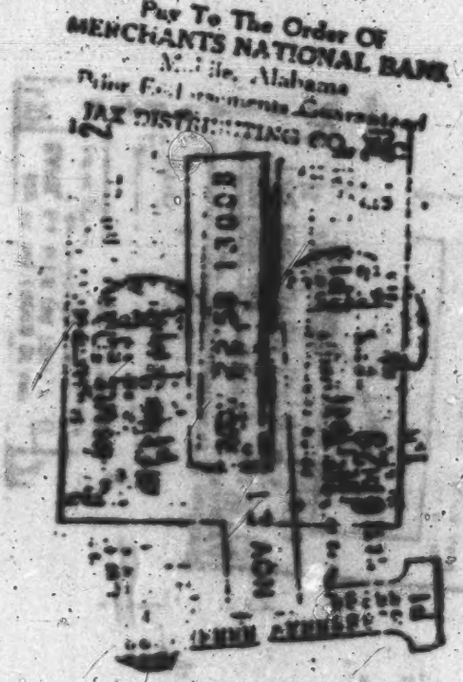
The reverse side of 11 checks showing endorsements in Exhibits Nos. 83 and 84 are duplicates of the 11 checks in Exhibit 82 appearing at side folios 714-716, printed pages 1341-1343.

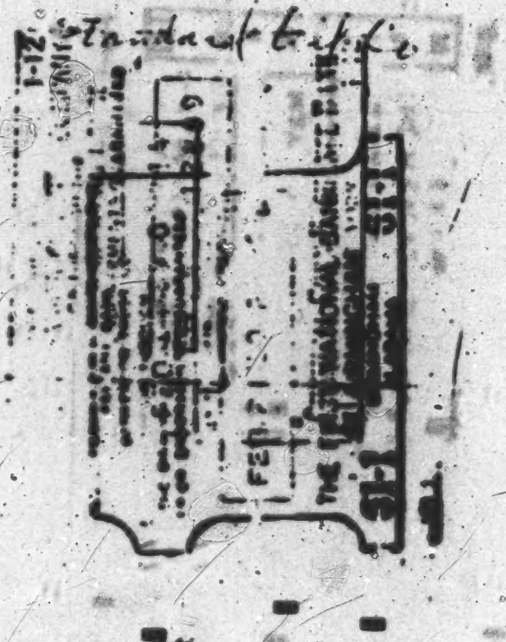
[fol. 723]

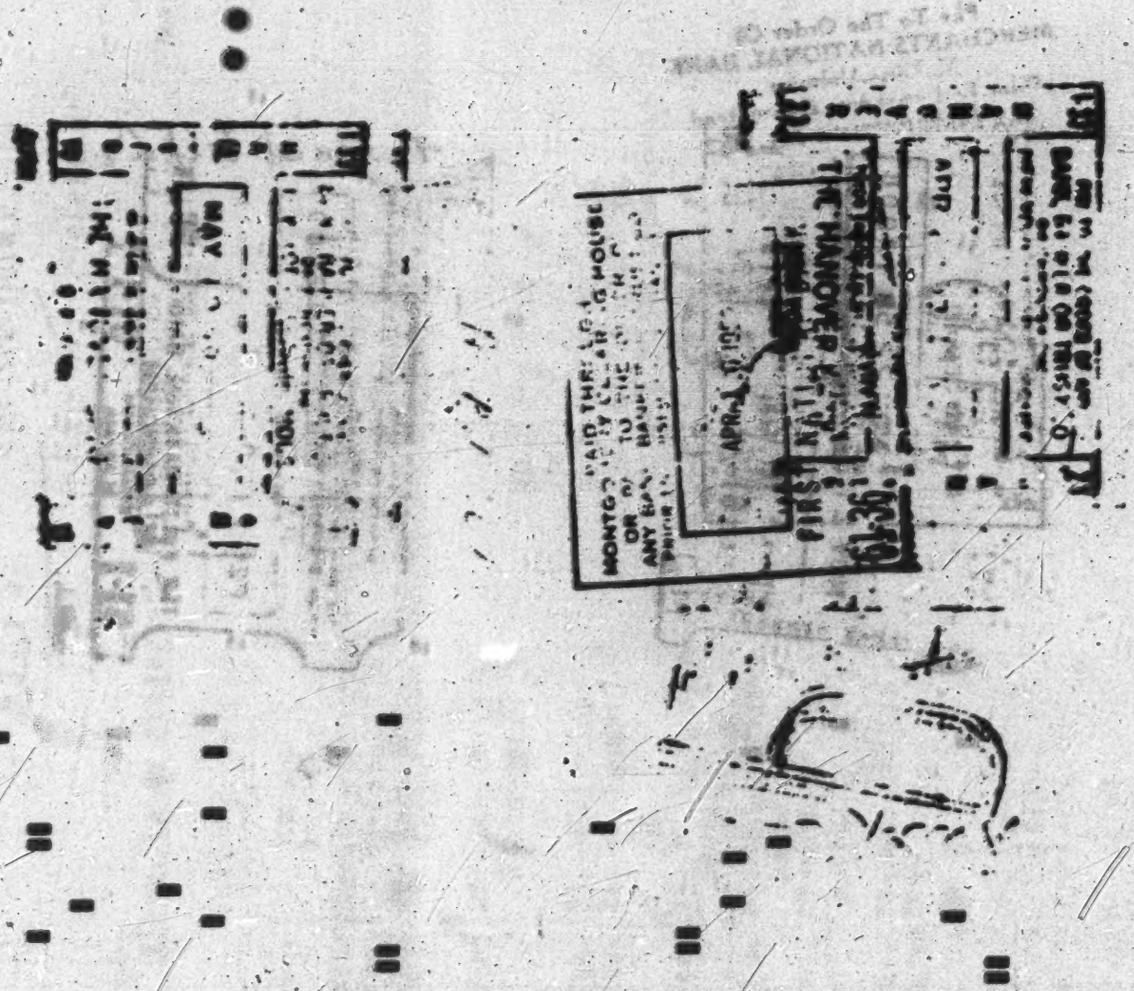
PLAINTIFF'S EXHIBIT 85

S. S. No. 77-01 Mobile, Ala.

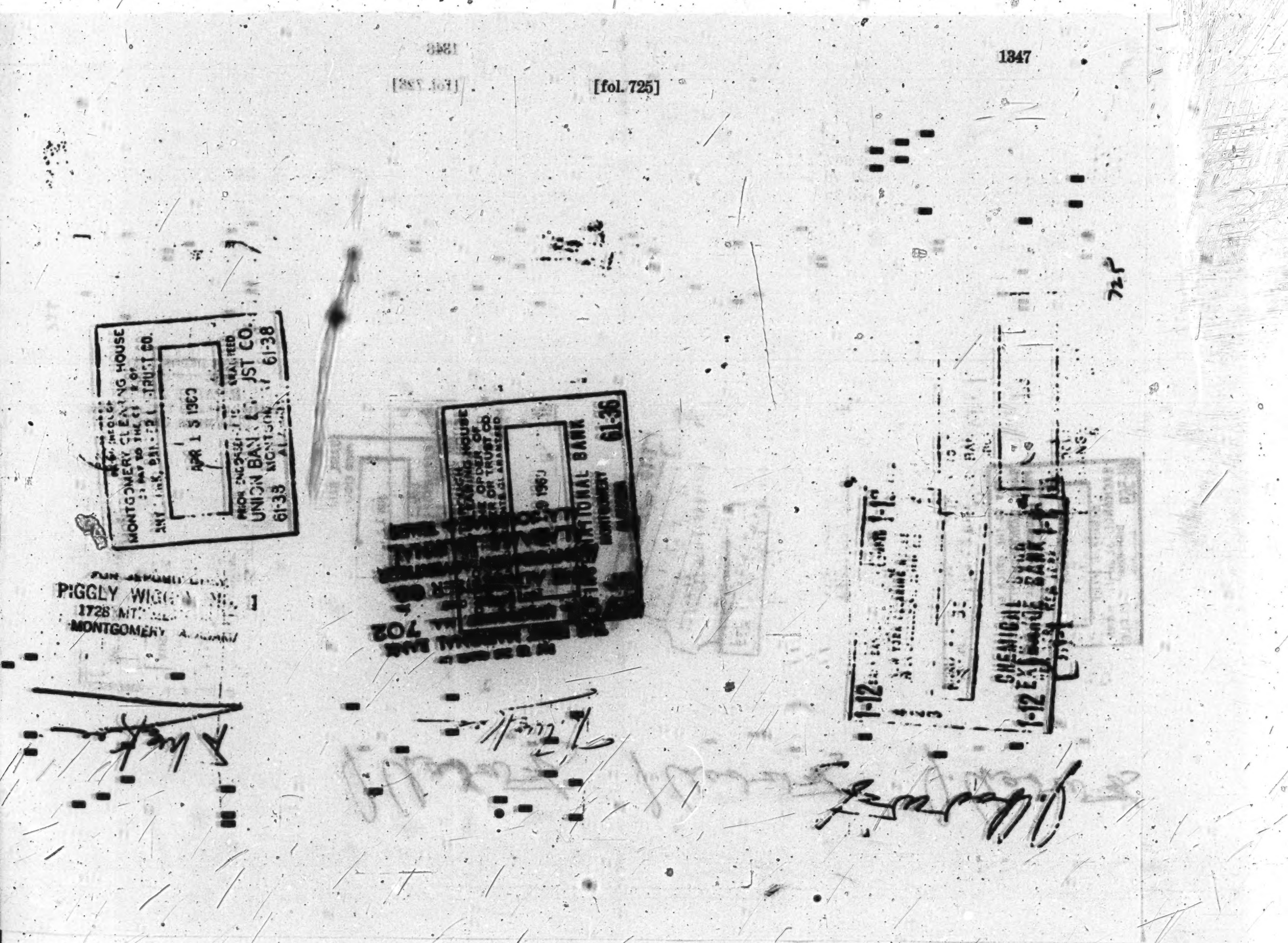






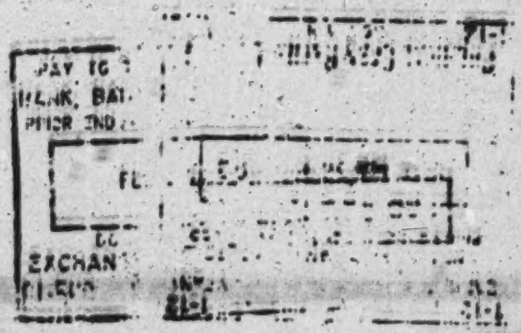


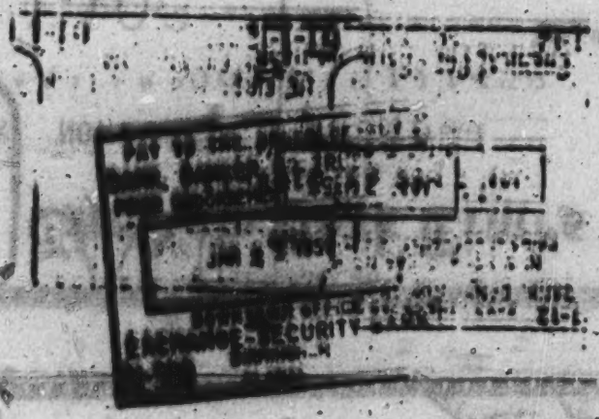
[fol. 725]

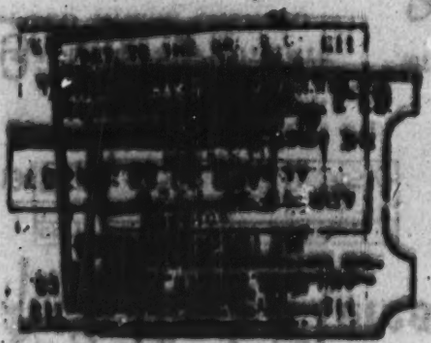

MONTGOMERY CLEARING HOUSE
APR 1 5 1963
UNION BANK & TRUST CO.
61-38
PIGGLY WIGGLY
1728 MT.
MONTGOMERY
61-36
1-12
1-12 EXCHANGE BANK

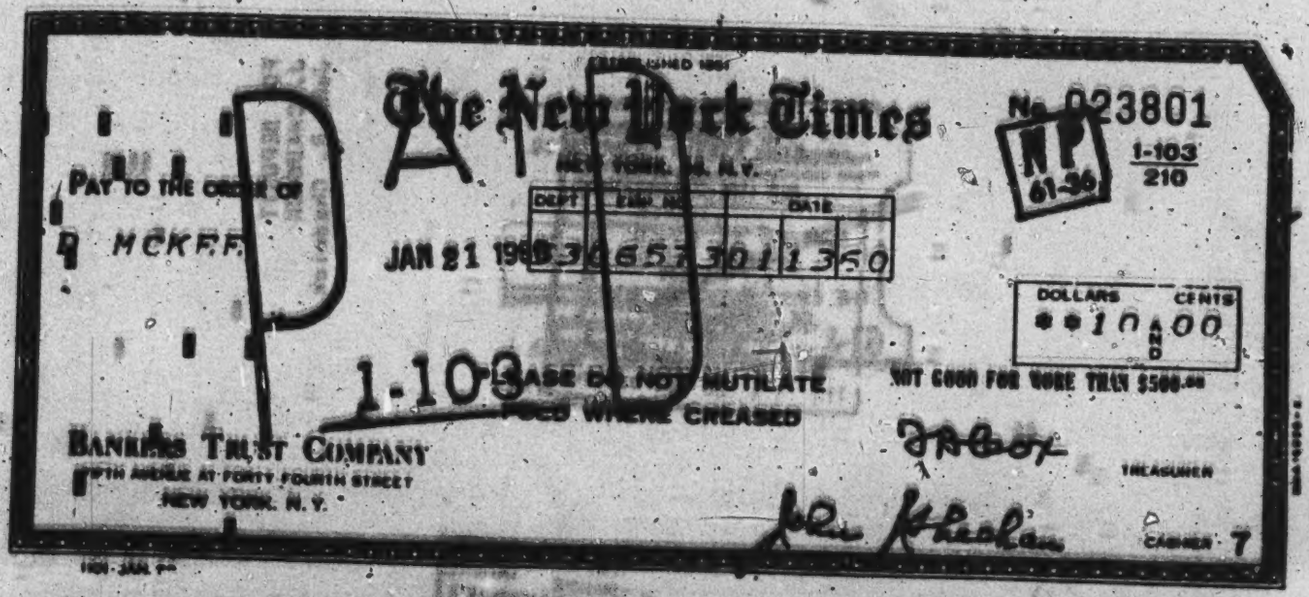
FOR DEPOSIT TO
THE
RANDOLPH
COLUMBUS, GEORGIA

MAR 1 7 1953
FIRST NATIONAL
61-36









PAID

The New York Times

No. 023801

1-103
210

PAY TO THE ORDER OF

MCKEE

JAN 21 1960

DEPT. | PAY NO. | DATE

30657301360

DOLLARS | CENTS

**10 AND 00

1-103

CASH DO NOT MUTILATE
FOLD WHERE CREASED

NOT GOOD FOR MORE THAN $500.00

BANKERS TRUST COMPANY
FIFTH AVENUE AT FORTY FOURTH STREET
NEW YORK, N.Y.

TREASURER

CASHIER 7

PAID

The New York Times

No. 210108

1-103
210

PAY TO THE ORDER OF

CHADWICK

NOV 19 1959

02-50 DATE

DOLLARS | CENTS

EXACTLY 020 DOLLARS AND 00 CENTS 11145R

**20 00

1-103

NOT GOOD FOR MORE THAN $500.00

THE NEW YORK TIMES COMPANY

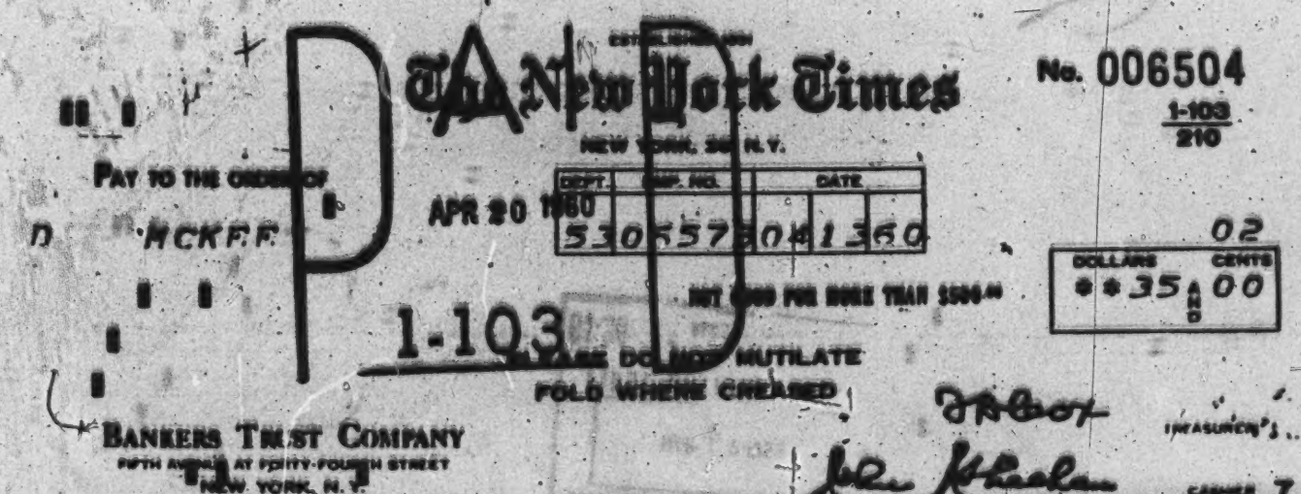
TREASURER

CASHIER

TO THE

BANKERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.

7



PAID

The New York Times

No. 006504

1-103
210

PAY TO THE ORDER OF

MCKEE

APR 20 1960

DEPT. | PAY NO. | DATE

53065730413 60

02

DOLLARS | CENTS

**35 AND 00

1-103

CASH DO NOT MUTILATE
FOLD WHERE CREASED

NOT GOOD FOR MORE THAN $500.00

BANKERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.

TREASURER'S

CASHIER 7

718

1360

[Vol. 728]

PLAINTIFF'S EXHIBIT 96

ESTABLISHED 1851

The New York Times

NEW YORK 36, N.Y.

No. 003636

1-103
210

PAY TO THE ORDER OF

MAR 23 1960

DEPT.	EMP. NO.	DATE

DOLLARS CENTS
*** AND 00

NOT GOOD FOR MORE THAN $500.00

PAID

1-103

PLEASE DO NOT MUTILATE
FOLD WHERE CREASED

BANKERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.

TREASURER

CASHIER 7

1101-JAN. 60

ESTABLISHED 1851

The New York Times

NEW YORK 36, N.Y.

No. 210105

1-103
210

PAY TO THE ORDER OF

CASTLE

	66 02174	DATE

EXACTLY 05 DOLLARS NOV 24 1959 CENTS 11145R

DOLLARS CENTS
**5 AND 00

NOT GOOD FOR MORE THAN $500.00

PAID

THE NEW YORK TIMES COMPANY 103

TREASURER

CASHIER

TO THE

BANKERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.

7

ESTABLISHED 1851

The New Yorк Times

NEW YORK 36, N.Y.

No. 002863

1-103
210

PAY TO THE ORDER OF

CASTLE

DEPT.	EMP. NO.	DATE
66	02174	

FEB 24 1959

DOLLARS CENTS
*** AND 00

NOT GOOD FOR MORE THAN $500.00

PAID

PLEASE DO NOT MUTILATE
FOLD WHERE CREASED

BANKERS TRUST COMPANY 10
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.

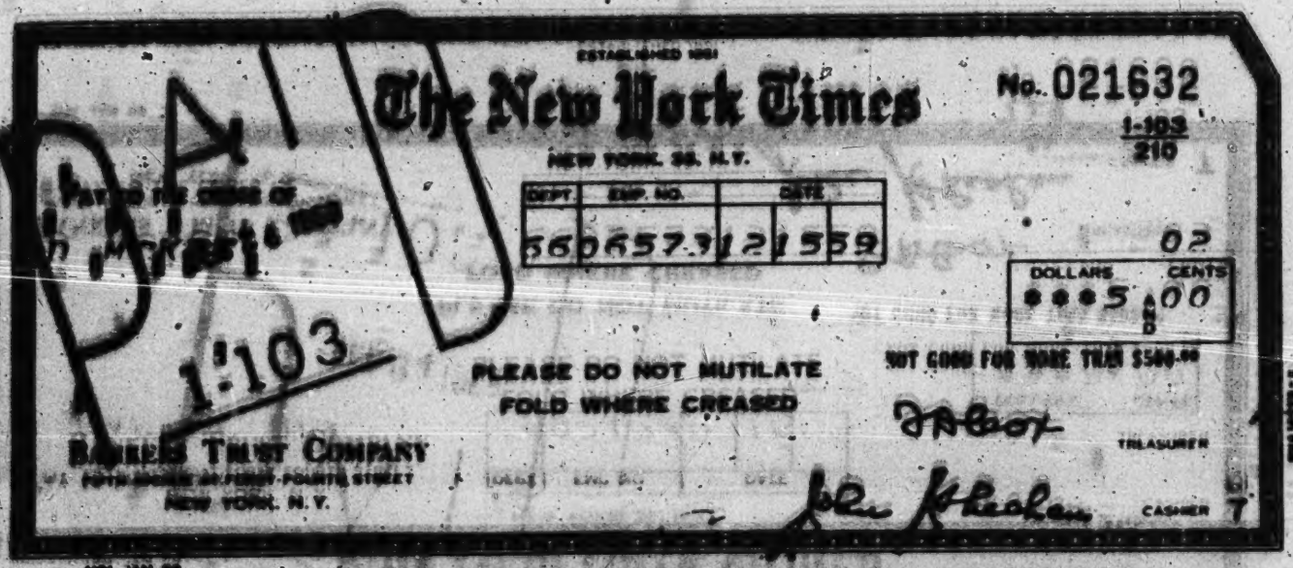
TREASURER

CASHIER 7

1101-JAN. 60

[fol. 726]

1851



ESTABLISHED 1851

The New York Times

NEW YORK, 36, N.Y.

No. 021632

1-103
210

PAY TO THE ORDER OF

DEPT. | EMP. NO. | DATE

560657 | 121559

02

DOLLARS | CENTS

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AND

PAID

1-103

PLEASE DO NOT MUTILATE
FOLD WHERE CREASED

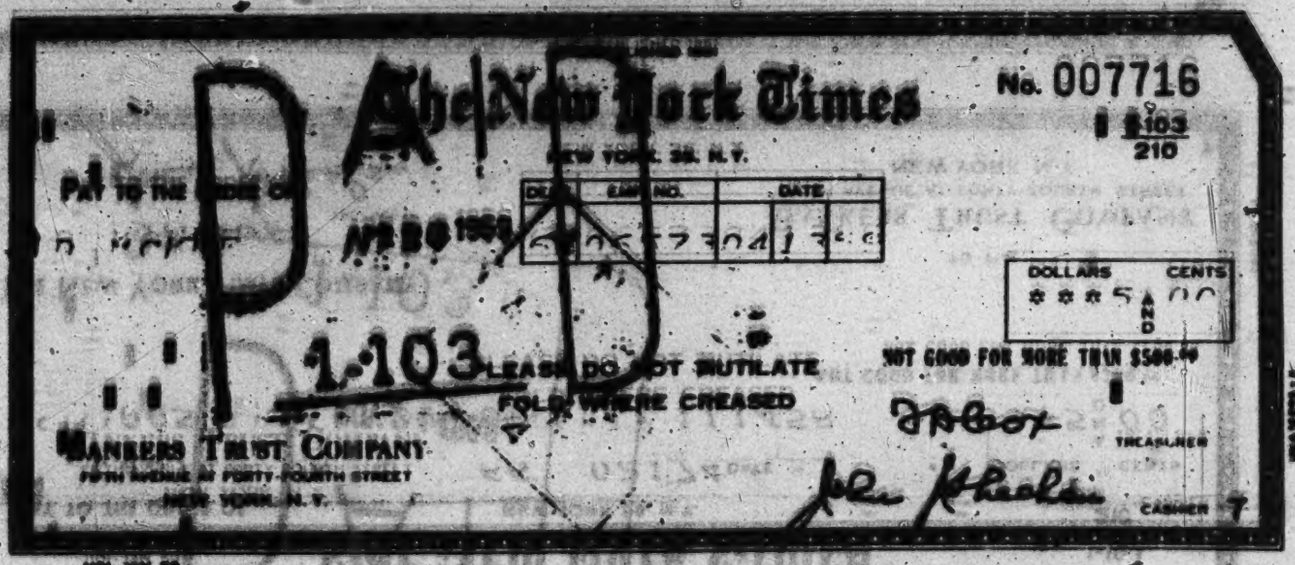
NOT GOOD FOR MORE THAN $500.00

TREASURER

CASHIER 7

MANUFACTURERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.

1101-2001 69



ESTABLISHED 1851

The New York Times

NEW YORK, 36, N.Y.

No. 007716

1-103
210

PAY TO THE ORDER OF

DEPT. | EMP. NO. | DATE

MAY 20 1960

DOLLARS | CENTS

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PAID

1-103

PLEASE DO NOT MUTILATE
FOLD WHERE CREASED

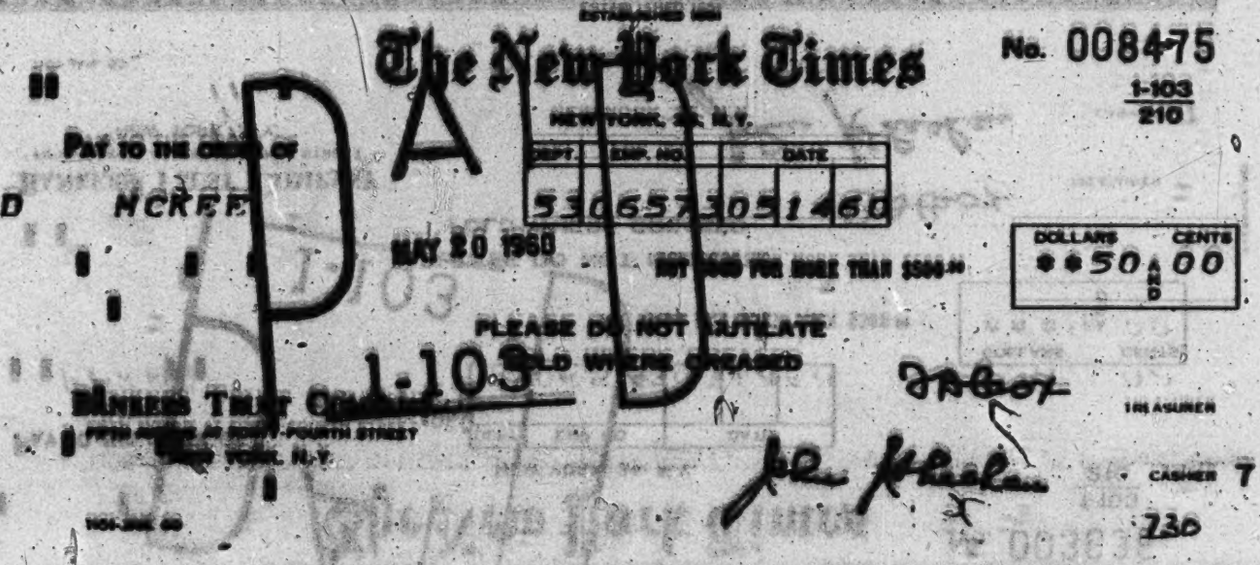
NOT GOOD FOR MORE THAN $500.00

TREASURER

CASHIER 7

MANUFACTURERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.

1101-2001 69



ESTABLISHED 1851

The New York Times

NEW YORK, 36, N.Y.

No. 008475

1-103
210

PAY TO THE ORDER OF

D MCREE

DEPT. | EMP. NO. | DATE

530657 | 305460

MAY 20 1960

DOLLARS | CENTS

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AND

PAID

1-103

PLEASE DO NOT MUTILATE
FOLD WHERE CREASED

NOT GOOD FOR MORE THAN $500.00

TREASURER

CASHIER 7

MANUFACTURERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.

1101-2001 69

730

The New York Times
No. 188104
1-103
210
PAY TO THE ORDER OF
CHADWICK
DOLLARS
CENTS
THE NEW YORK TIMES COMPANY
TO THE
BANKERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.

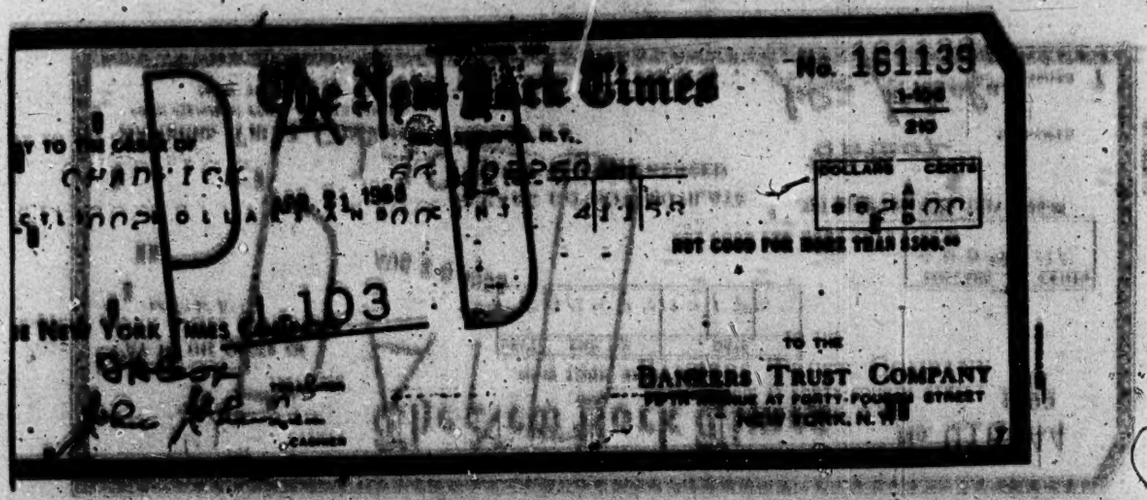
The New York Times
No. 194800
1-103
210
PAY TO THE ORDER OF
CHADWICK
DOLLARS
CENTS
THE NEW YORK TIMES COMPANY
TO THE
BANKERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.

The New York Times
No. 176621
1-103
210
PAY TO THE ORDER OF
CHADWICK
DOLLARS
CENTS
THE NEW YORK TIMES COMPANY
TO THE
BANKERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.

The New York Times
No. 016344
1-103
210
PAY TO THE ORDER OF
DEPT.
EMP. NO.
DATE
DOLLARS
CENTS
PLEASE DO NOT MUTILATE
1-103
TREASURER

[fol. 731]

1353


The New York Times
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1-103
210
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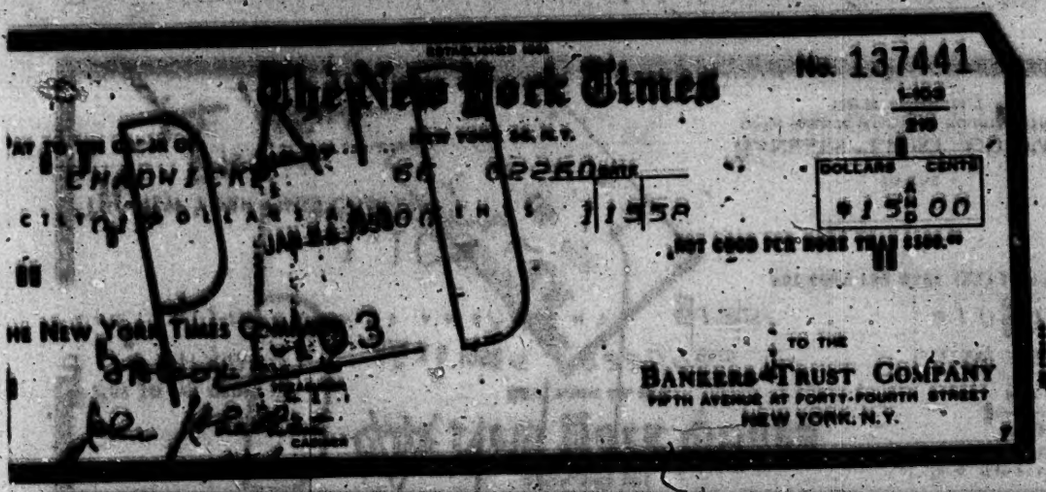
$ 25 00
NOT GOOD FOR MORE THAN $500.00
THE NEW YORK TIMES COMPANY
1-103
TO THE
BANKERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.
PAID


The New York Times
No. 137441
1-103
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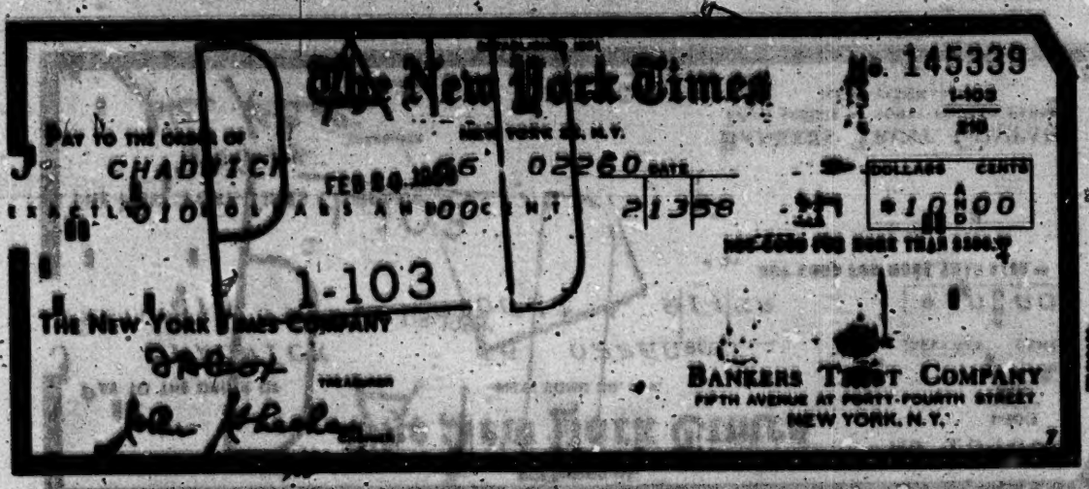
NOT GOOD FOR MORE THAN $500.00
THE NEW YORK TIMES COMPANY
1-103
TO THE
BANKERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.
PAID


The New York Times
No. 145339
1-103
210
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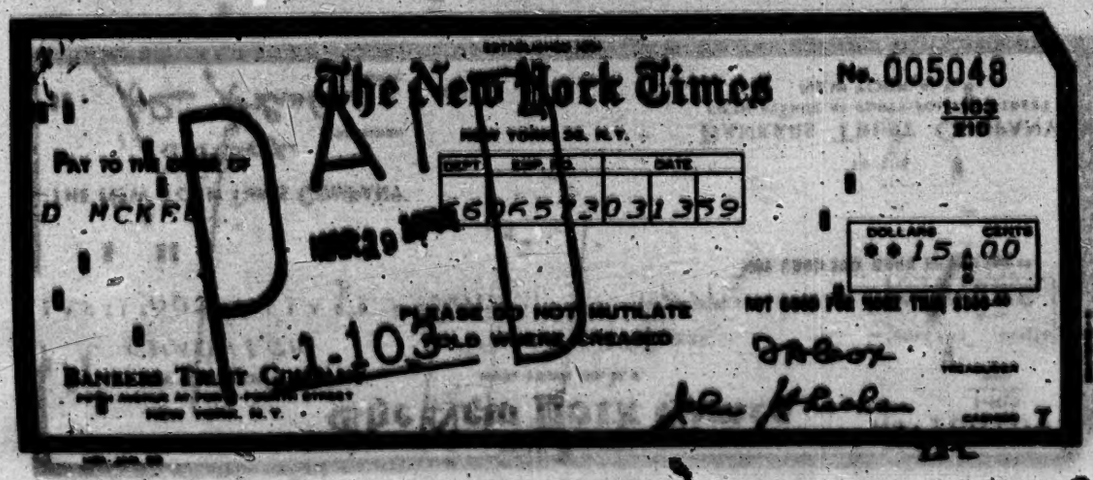
NOT GOOD FOR MORE THAN $500.00
THE NEW YORK TIMES COMPANY
1-103
BANKERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.
PAID


The New York Times
No. 005048
1-103
210
DOLLARS CENTS
** 15 00
NOT GOOD FOR MORE THAN $500.00
PLEASE DO NOT MUTILATE
1-103
BANKERS TRUST COMPANY
FIFTH AVENUE AT FORTY-FOURTH STREET
NEW YORK, N.Y.
PAID

1354
[fol. 732]

[fols. 733-737]

CLERK'S NOTE RE PLAINTIFF'S EXHIBIT No. 87

The 17 checks in Exhibit 87 are duplicates of the 17 checks in Exhibit 86 appearing at side folios 728-732, printed pages 1350-1354, supra and are not being reprinted here.

[fols. 738-742]

CLERK'S NOTE RE PLAINTIFF'S EXHIBIT No. 88

The reverse side of 17 checks showing endorsements in Exhibit No. 88 are duplicates of the 17 checks in Exhibit 85 appearing at side folios 723-727, printed pages 1345-1349, supra and are not being reprinted here.

[fols. 743-747]

CLERK'S NOTE RE PLAINTIFF'S EXHIBIT No. 89

The 17 checks in Exhibit 89 are duplicates of the 17 checks in Exhibit 86 appearing at side folios 728-732, printed pages 1350-1354, supra and are not being reprinted here.

[fols. 748-752]

CLERK'S NOTE RE PLAINTIFF'S EXHIBIT No. 90

The reverse side of 17 checks showing endorsements in Exhibit No. 90 are duplicates of the 17 checks in Exhibit 85 appearing at side folios 723-727, printed pages 1345-1349, supra and are not being reprinted here.

150-E

FULTON NATIONAL BANK
MARIETTA ST.
ATLANTA, GA

The New York Times

Expense Statement

Name: FOR ARAIT TO Mr. of. Claude Sitton

Statements should be turned in promptly.

All expenses must be itemized. Hotel and other receipts should be attached.

Dates	Assignment (Place and City)	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad Pullman and Steamship	Tips	Miscellaneous	Amount
Jan. 21	[illegible] arrived at 8:30 a.m. by air, arrived [illegible], Fla., ATL										
	6:15 a.m. Eastern Time 7:50 a.m. by air, arrived at 11:35 a.m.		1 25	8 50	10 30		4 50		4 00		
	DAILY AVERAGE 18 25									Baggage in excess of 1 00 allowance at airport	
					- 0 -						
Jan. 25	[illegible] arrived at 8:20 a.m. by air, arrived Montgomery, Ala., ATL										
	9:20 a.m. C.S.T.			50	9 40		3 50		2 50		
Jan. 26	[illegible] Montgomery 4:50 p.m. by air, arrived at 11:30 a.m.										
				1 50	8 75		1 45		2 50		
	DAILY AVERAGE 15 25									Baggage time over 1 60 allowance at airport	
					- 0 -						
	newspapers Jan. 18 through Jan. 26										
	stamps										
	air express charges (Had to leave Biloxi unexpectedly Jan. 12 to cover story in Biloxi after having spent last two days at home. All shirts in laundry and none left at night had to have them shipped.)										
	Totals	1 75	1 40	1 05	9 15	9 00		260			

AMOUNT 54.35
VOUCHER No.
CHK. 6557-58
RECEIVED Hwy.
CHECKED
ENTERED

Approved (illegible)

Checked

Audited (illegible)

Total of Expenses	69 43 68.43
Amount Advanced (unintelligible)	return 1/5 8 15.00
Balance Due N.Y. Times	
Balance Due	54 25 853.35

753

1356 [fol. 753] PLAINTIFF'S EXHIBIT 91

60-2 FOR DEPOSIT TO FULTON NATL. BANK MARIETTA N.A.

The New York Times

Expense Statement

ATC

Name Claude Sitton | Southern News | Week Ending:

Statements should be turned in weekly.

All expenses must be itemized. Hotel and other available vouchers should be attached.

Dates	Assignment (List each city)	Rail Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Misc. Items	Miscellaneous Item	Amount
Feb.	25 departed Atlanta by air 8:30 a.m., arrived Chattanooga, Tenn., 9:30 a.m.		1 25	300		667	3 85			1477
"	26 departed Chattanooga 11:45 p.m. E.S.T. by air, arrived Atlanta 1 a.m. Feb. 27.		1 35	325	18 54	825	5 80			
	entertaining news sources							795		4526
"	27 departed Atlanta 8 a.m. by air, arrived Montgomery, Ala., 7:30 p.m. C.S.T.		60	350			2 50			880
"	28 -Montgomery-		2 00	350	721	800	2 70			2562
"	29 -Montgomery-		80	420	721	750	2 25	valet 75		2271
March	1 departed Montgomery by air 4:50 p.m., arrived Atlanta 7 p.m. E.S.T.									
	March 2		1 75	600	721	800	5 40	laundry 2.42.		3058
	- 0 -									
March	6 departed Atlanta by air 8 a.m., arrived Montgomery, Ala., 9 a.m. C.S.T.		80	475		650	4 60			1722
"	7 departed Montgomery 9:11 a.m. by air, arrived Atlanta 12:15 p.m. E.S.T. March 8		1 00	8 00	7 75	825	3 75			2072
	parking fines car at airport during above three trips									700
	" " " for use on local stories									200
	servicing Times portable typewriter & new ribbon									1182
	telephone answering service (Feb. & March)									2500
	office telephone									3776
	copy of Atlanta school desegregation case ruling									200
	newspapers Feb. 22 through March 13									1083
	DAILY AVERAGE CHATTANOOGA 7.25									
	Montgomery 7.25									
	ENTERTAINMENT 7.95									
	Totals		9 55	39 20	14 79	53 17	30 85	10 92		19603

Approved RVG

Checked

Audited

Total of Expenses	$387.64
Amount Advanced	
Balance Due N.Y. Times	
Balance Due	$387.64

AT

337 64

0517-3362

75Y

[fol. 754]

PLAINTIFF'S EXHIBIT 92

1357

FULTON NATL BANK
MARIETTA ST.
ATLANTA GA
FOR DEPOSIT TO A/C

The New York Times

Expense Statement

Name Claude Sitton

Southern News

Week Ending

Statements should be turned in weekly.

All expenses must be itemized. Hotel and other available vouchers should be attached.

Dates	Assignment (List each city)	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Miscellaneous	
		by							
Jan.	12 departed Atlanta [illegible] Times car 10:30 P.M., arrived Biloxi, Miss.,								
	9 a.m. (C.S.T.), Jan. 13					200	gasoline 209		4 21
Jan.	13 -Biloxi-		100			955	2.10		12 66
"	14 -Biloxi-	by	25		10 44	8 75	1 65		23 84
"	15 departed Biloxi [illegible] Times car 11:45 a.m., arrived Baton Rouge, La.,								
	4 P.M.		25		10 39	901	3 50		
	Baton Rouge				entertainment paid source 24.56				22 71
"	16 departed [illegible] by Times car 9:30 a.m., arrived Biloxi, Miss.,								
	12:30 p.m. Jan. 17		1 84		6 18	9 10	4 60	garage 155	23 67
"	17 departed Biloxi by Times car 1:30 p.m., arrived Montgomery, Ala.,								
	10:00 p.m.		75		10 35	9 50	3 80	valet 331	27 71
"	18 departed Montgomery 9 a.m.				6 70	4 50	2 05		13 25
	arrived Atlanta 2:30 p.m. [illegible]								
	newspapers Jan. 10 through 17							2 05	2 05
	ream of yellow second sheets							1 10	1 10
	Totals							3 15	

ENTERTAINMENT 24.56

DAILY AVERAGE BILOXI 23.25

BATON ROUGE 21.56

MISC. EXPENSES 1.75

valet 32.97

garage 6.15

KJT-53

Approved NCV

Checked

Audited

Total of Expenses	132.92
Amount Advanced	
Balance Due N.Y. Times	
Balance Due	132.92

755

PLAINTIFF'S EXHIBIT 93

1358 [fol. 755]

650-E

FULTON NAT'L BANK
ATLANTA ST.
ATLANTA, GA

FOR SENDING TO ME

The New York Times PAY

Expense Statement

Name: Claude Sitton

Southern News

Week Ending

Statements should be turned in weekly.

All expenses must be itemized. Hotel and other available vouchers should be attached.

Dates	Assignment (Line of City)	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Rail Tolls	Pullman Sleeper	Miscellaneous Item	Miscellaneous Amount
Dec. 14	Departed Atlanta 11:30 a.m. (delayed four hours at airport) arrived Little Rock 8:30 p.m.		50	9 50		6 00					16 00
Dec. 15	-Little Rock-		1 00	6 00	1676						23 76
Dec. 16	-Little Rock-		1 00	6 00	1676						23 76
Dec. 17	-Little Rock-		1 50	6 00	1676						24 26
Dec. 18	Departed Little Rock 7 p.m. arrived Atlanta 2:55 a.m. Dec. 19		150	15 50	1676						33 76
Dec. 19	Departed Atlanta (by Times car) 7 p.m. E.T, arrived Tuskegee, Ala., 10:30 p.m. C.T			(nothing)							
Dec. 20	-Tuskegee-		200		1500					Dress 2 50	19 50
Dec. 21	Departed Tuskegee 2 p.m. CST arrived Atlanta 6:30 pm EST		100		1500						16 00
	Typewriter rental in Little Rock (Times typewriter temporarily lost in transit.)										4 64
	Typewriter ribbon and paper										2 32
	Service Times car										22 6
	Gasoline purchased on Montgomery-Atlanta trip of Dec. 8, (no credit card station available) and which failed include on expense account for that week.										4 05
	newspapers Dec. 14 through 21										5 50
	Stamps										2 00
	Totals										

Daily Average 16.25

Entertainment 2.50

AMOUNT 198.18
VOUCHER No.
CODE 4.0.01.201
ENTERED
CHECKED
APPROVED

Approved

Checked

Audited

Total of Expenses 1198.18

Amount Advanced

Balance Due

Balance Due 1198.18

756

[fol. 756]

PLAINTIFF'S EXHIBIT 94

1359

The New York Times

Expense Statement

PAID

Name Claude Sitton | Southern News | Week Ending

Statements should be turned in weekly.

All expenses must be itemized. Hotel and other available vouchers should be attached.

Dates	Assignment	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad	Publicity Stories	Miscellaneous Items	Amount
Dec. 1	departed Atlanta (Times car) 7:30 a.m. EST, arrived Tuskegee, Ala., 10:30 a.m. CST		.75		8 00						8.75
Dec. 2	departed Tuskegee, Ala., (Times car) 11 a.m., arrived Montgomery, Ala., 12:15 p.m.		1 00	2 00	1500		press 4 00				2200
Dec. 3	-Montgomery-		80	1 00	1575						1755
Dec. 4	departed Montgomery 4:00 p.m., arrived Birmingham, Ala., 6:30 p.m., (Times car)		.75		1575						16 [illegible]
Dec. 5	departed Birmingham (plane) 9:30 a.m., arrived Little Rock, Ark., 4:30 p.m.		50	3 00	1500		press 5 00				[illegible]
Dec. 6	-Little Rock-		1 00	[illegible]	1521						16 21
Dec. 7	departed Little Rock (plane) 9 a.m., arrived Birmingham, Ala., 1:40 p.m. departed Birmingham 5:30 p.m. (Times car), arrived Montgomery, Ala., 8 p.m.		50		1830		battery recharge $2.00				2080
Dec. 8	-Montgomery-		1 00	3 50	1575		laundry 7 04				2729
Dec. 9	departed Montgomery (Times car) 6 p.m., arrived Atlanta 12:30 p.m. EST		1 00	1 75	1575		gasoline 405				22 55
	garage charges on trip			550							550
	Telephone (office)										8287
	Telephone answering service (December)										1250
	Newspapers Nov. 30 through Dec. 13										850
	Taxi fare on Atlanta assignments										4 00
	Stamps										3 00
	Totals		7 30	16 75	14 51	8 00		13 05	9 04		119 87

Paid Average $16.25

Subject to audit $9.00

AMOUNT 291.52

VOUCHER No.

CHECK 4.0.01.207

APPROVED Hal

CHARGED

FULTON NAT'L BANK
MARIETTA ST.
ATLANTA, GA.

(For Deposit to
a/c Claude Sitton)

Approved	Total of Expenses	291.52
Checked	Amount Advanced	-
Audited	Balance Due N.Y. Times	-
	Balance Due	291.52

757

1360 [fol. 757]

PLAINTIFF'S EXHIBIT 95

The New York Times

EXPENSE STATEMENT

Name Claude P. Sitton
(Full Name)

Department Southern News

Week Ending _____ 19

EXPENSES SHOULD BE ITEMIZED EACH DAY—READ INSTRUCTIONS ON REVERSE SIDE

Dates	Assignment (List Each City)	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad	Pullman Sleeper	Miscellaneous Item	Miscellaneous Amount
July	14 departed Atlanta 7:30 p.m. by air, arrived Tallahassee,									ATC	
Fla.,	11:30 p.m.			7 00			excess bag.—		1 30		8 30
July	15 departed Tallahassee 2:30 p.m., by air arrived Miami,									ATC	
Fla.,	5 P.M.		45	12 00	15 00		excess bag.—		1 30		28 75
July	16 -Miami-		1 15	3 75	15 21						19 77
July	17 -Miami-		2 71	6 50	15 21						24 42
July	18 departed Miami 11:30 a.m. by air, arrived Chattanooga,									ATC	
Tenn.,	3:30 p.m.		1 50	7 00	15 21		excess bag.—		3 09		26 30
July	19 departed Chattanooga 1:30 p.m. by air, arrived Little										
Rock,	Ark., 5:30 p.m		1 50	3 50	15 00		excess bag.—		2 01	ATC	21 01
July	20 departed Little Rock 2:30 p.m. by car, arrived Rogers,										
Ark.,	9 p.m.		press- 3 00		15 30		valet 2 90				24 20
July	21 departed Rogers 8:30 a.m. by car, arrived Ft. Smith,										
Ark.,	8:00 p.m.				15 00						15 00
July	22 departed Ft. Smith 1 p.m., arrived Clarksville, Ark.,										
5 p.m.			1 00	4 00	15 00						20 00
July	23 departed Clarksville 3:30 p.m., arrived Huntsville Ark.,										
7 p.m.,	departed Huntsville 9 p.m. arrived Russellville, Ark.,										
11:45	p.m.		50	5 50	15 00		press— 3 00				24 00
July	24 departed Russellville 8:30 a.m. by bus, arrived Little										
Rock	11:45 a.m.	3 31	1 00	4 00	15 00						22 31
	Totals	2 31	11 91	53 25	153 93			5 90	7 70		

SEE ATTACHED LETTER

AMOUNT 235.00
VOUCHER No.
CODE 4.0.25
ENTERED
ENDORSED
APPLIED TO ADVANCE

Pay $235.00 to the Order of National Bank of Atlanta - Main Office
Marietta Street Atlanta Ga
A/C C.P. Sitton

Approved	RCG	Total of Expenses	$235.00 $234.06
Checked	jl	Amount Advanced	
Audited	M	Balance Due	

759

[fol. 758]

PLAINTIFF'S EXHIBIT 96

1361

The New York Times

EXPENSE STATEMENT

Name Claude F. Sitton (Full Name)

Department Southern News

Week Ending _____ 19

EXPENSES SHOULD BE ITEMIZED EACH DAY—READ INSTRUCTIONS ON REVERSE SIDE

Dates	Assignment (Last Each City)	Bus (Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad	Pullman Sleeper	Miscellaneous Item	Miscellaneous Amount
June 2 departed Chattanooga 6 a.m., arrived Montgomery, Ala., at 1:30 p.m., departed Montgomery 3:30 p.m., arrived Birmingham, Ala., at 10:15 p.m.			4 00	12 00	15 00		press--	4 00			35 00
June 3 -Birmingham-			3 00	4 00	15 00						22 00
June 4 -Birmingham-			4 00	3 00	15 00						22 00
June 5 departed Birmingham 7 a.m., arrived Chattanooga 9 a.m., departed Chattanooga 10 a.m., arrived Atlanta 1:30 p.m.			2 00	6 00	1985						2985
June 6 -Atlanta-			1 00	4 00	1985		press--	4 00			2985
June 7 -Atlanta-			1 00	2 00	1985						2985
June 8 departed Atlanta 1:30 p.m., arrived Columbia, S.C. at 4:30 p.m.			1 00	6 00	1500		press	6 00			2300
June 9 -Columbia-			4 00	4 00	1500		press	3 00			2300
June 10 -Columbia-			3 00	4 00	1500						2300
June 11 -Columbia-			4 00	4 00	1500						2300
June 12 departed Columbia 10 a.m., arrived Chattanooga 8 p.m.			1 00	6 00	1500						2300
Cost of airline ticket (held for in case before arrival of air travel card) from Chattanooga to Montgomery to Miami, Birmingham to Chattanooga plus excess baggage on this and trip to Columbia											4353
*** SEE ATTACHED EXPLANATION ***											
Totals			28 00	55 00	17985			17 00			43 53

AMOUNT 2.44
VOUCHER No.
CODE 4.0.01.261
ENTERED
CHECKED
APPLIED TO ADVANCE

Daily Average $15.00
Entertainment $ 17.00

Approved	Total of Expenses 5/6	4/. 324.41	$323.00
Checked	Amount Advanced	5.00	300.56
Audited	Balance Due		$ 2.44

759

1362
[fol. 759]

PLAINTIFF'S EXHIBIT 97

The New York Times

EXPENSE STATEMENT

AMOUNT 3.47
VOUCHER No.
CODE 4-4-61
CHECKED
TO COVER

Name Claude F. Sitton (Full Name)

Department Southern News Week Ending 19

EXPENSES SHOULD BE ITEMIZED EACH DAY—READ INSTRUCTIONS ON OTHER SIDE

Date	Assignment and Points Visited	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Miscellaneous Item	Amount
May 16,	departed [redacted] Bayside, N.Y., 8 a.m., arrived Nashville,								
12:30 p.m., May 16....			1 00	7 00	15 73	per diem			23 73
May 17	departed Nashville noon arrived Paris Landing, Ky.							ATC	
at 4 p.m.....			1 00		15 00	per diem			16 00
May 18,	departed Paris Landing [redacted] at noon arrived Chattanooga,								
Tenn., 9 p.m....					15 00				15 00
May 19	--Chattanooga--				15 00				15 00
May 20	departed Chattanooga 8 a.m. arrived Huntsville, Ala., May 20								
at noon....					15 00				15 00
May 21	departed Huntsville at noon arrived Memphis, Tenn., May 21								
at 6 p.m....				1 00	16 00		(press 3 00)		20 00
May 22	departed Memphis at 1 p.m. arrived Little Rock, Ark., May 22								
at 8 p.m.			1 00	2 00	15 00		(press 3 00)		21 00
May 23	--Little Rock--		1 00	4 00	15 00				20 00
May 24	--Little Rock--		1 00	2 00	15 00		(press 2 00)		20 00
May 25	--Little Rock--		4 68	4 00	15 00		(press 2 00)		25 68
May 26	--Little Rock--		2 00	3 00	15 00				20 00
May 27	--Little Rock--		1 00	4 00	15 00		(press 3 00)		23 00
May 28	--Little Rock--		2 00	4 00	15 00				21 00
May 29	--Little Rock--		6 00	2 00	15 00		(press 2 00)		24 00
May 30	--Little Rock--		1 00	3 00	15 00				19 00
May 31	departed Little Rock 3 p.m. arrived Huntsville, Ala., [redacted]								
May 31	midnight			1 00	15 00				16 00
June 1	departed Huntsville at 3 p.m. arrived Chattanooga, Tenn.,								
June 1	at 8 p.m.				15 00				15 00
Daily Average $15.00									
Entertainment $13.00									
	(see attached memorandum additional explanation)								
	Totals		21 68	36 00	256 73		15 00		$329.41

Approved M. Lil	Total of Expenses	$329.41	
Checked	Amount Advanced	$350.00	
Audited	Balance Due N.Y.T.	$ 20.59	

760

[fol. 760]

PLAINTIFF'S EXHIBIT 98

1363

F 659

The New York Times

EXPENSE STATEMENT

Name John M. Popham
(Full Name)

Department Southern News Week Ending _____ 19

EXPENSES SHOULD BE ITEMIZED EACH DAY—READ INSTRUCTIONS ON REVERSE SIDE

Dates	Assignment and Remarks	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad	Pullman Sleeper	Miscellaneous Item	Miscellaneous Amount
Aug. 26, departed Chattanooga, 8 A.M., arrived Knoxville, Tenn.,											
Aug. 26 at noon			$1.00	$1.00	$6 per diem, $1 garage						$19.00
Aug. 27, Knoxville (Clinton)			$1.00	$1.00	$6.00 per diem, $1 garage						$19.00
Aug. 28, departed Knoxville 7:30 P.M., arrived Chattanooga, Tenn.,											
Aug. 28, 7:30 P.M.			$5.00	$1.00	$7 three meals, $1 tips						$14.00
Sept. 2, departed Chattanooga, Tenn., at 8 A.M., arrived Knoxville, Tenn.,											
Sept. 2, at noon			$1.00	$1.00	$6 per diem, $1 garage						$14.00
Sept. 3, Knoxville (Clinton)			$1.00	$1.00	$6 per diem, $1 garage						$14.00
Sept. 4, Knoxville (Clinton)			$8.00	$1.00	$6 per diem, $1 garage						$25.00
Sept. 5, departed Knoxville at noon, arrived Memphis, Tenn.,											
Sept. 6 (2 A.M.)			$8.00	$1.00	$6 per diem (two hotels) tips, $1 garage (2)						$26.00
Sept. 6, departed Memphis at 7 A.M., arrived Little Rock, Ark., at											
Sept. 6			$13.00	$1.50	$6 per diem, $1 garage (2 passes) see						$41.50
Sept. 7, Little Rock			$2.00	$1.50	$6 per diem, $1 garage (2 passes) His						$32.50
Sept. 8, Little Rock			$19.00	$1.50	$6 per diem, $1 garage (2 passes) Eighteen						$49.50
Sept. 9, Little Rock			$2.00	$1.50	$6 per diem, $1 garage (2 passes) attended						$32.50
Sept. 10, Little Rock			$2.00	$1.50	$6 per diem, $1 garage (2 passes)						$32.50
Sept. 11, Little Rock			$2.00	$1.50	$6 per diem, $1 garage (2 passes)						$32.50
Sept. 12, Little Rock			$3.00	$1.50	$6 per diem, $1 garage (2 passes)						$33.50
Sept. 13, Little Rock			$4.00	$1.50	$6 per diem, $1 garage (2 passes)						$34.50
Sept. 14, Little Rock			$2.00	$1.50	$6 per diem, $1 garage (2 passes)						$32.50
Sept. 15, Little Rock			$2.00	$1.50	$6 per diem, $1 garage (2 passes)						$32.50
Sept. 16, Little Rock			$2.00	$1.50	$6 per diem, $1 garage (2 passes)						$32.50
Sept. 17, Little Rock			$2.00	$1.50	$6 per diem, $1 garage (2 passes)						$32.50
Sept. 18, departed Little Rock at noon, arrived Memphis, Tenn.,											
Sept. 18, at midnight			$2.00		$6 per diem, $1 garage						$18.00
Sept. 19, departed Huntsville, Ala., at 8 A.M., arrived Chattanooga, Tenn.,											
Sept. 19 at 1 P.M.					$4 two meals, $1 tips						$ 5.00
Sept. departed Chattanooga 8 A.M., arrived Atlanta, Ga., at											
Sept. 20 at noon			$1.00	$2.00	$6 per diem, $1.50 garage						$22.50
Sept. 21, departed Atlanta at 5 P.M., arrived Sea Island, Ga.,											
Sept. 21 at Midnight			$1.00	$1.00	$21 per diem (2 supper)						$25.00
Sept. 22, Sea Idland					$15 per diem						$15.00
					(continued.....page 2)						
	Totals		$84.00	$49.00	$262.00		$33.50			$38.00	

Approved		Total of Expenses	
Checked		Amount Advanced	
Audited M	(15)	Balance Due	

761

(over)

1364 [fol. 761]

PLAINTIFF'S EXHIBIT 99

F 650

The New York Times

EXPENSE STATEMENT

Name John N. Popham (Full Name) Chattanooga Times

Department Southern News Chattanooga Tenn. Week Ending _____ 19

EXPENSES SHOULD BE ITEMIZED EACH DAY—READ INSTRUCTIONS ON REVERSE SIDE

Dates	Assignment (List Each City)	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad	Pullman Sleeper	Miscellaneous Item	Miscellaneous Amount
May 12	departed Chat[illegible] a 8 [illegible] arrived Atlanta, [illegible]										
May 14 at noon			1.00	1.00	$5 per diem, 3 meals						$18.00
May 15	departed Atlanta at 2 [illegible] arrived Birmingham, Ala.										
May 16 at midnight			1.00	1.00	$5 per diem, 3 meals						$18.00
May 16	departed Birmingham at 2 [illegible] arrived Little Rock, Ark.										
May 16 at 4 P.M.			1.50		$5 per diem, 3 meals						$18.50
May 17	Little Rock		1.00	1.00	$5 per diem, 3 meals						$13.50
May 18	departed Little Rock at 5 P.M. arrived Florence, Ala.,										
May 18 at midnight			1.00	1.00	$5 per diem,						$17.00
May 19	departed Florence at 10 A.M., arrived Chattanooga, Tenn.										
May 19 at 4 P.M.					4 the meals						$4.00
May 20	departed Chattanooga at 10 P.M., arrived Rockwood, Tenn.										
May 20 at midnight					$5 per diem, 3 meals, $1 incidentals						$6.00
May 22	departed Rockwood, Tenn., at 5 P.M., arrived Chattanooga, Tenn.,										
May 22 at 7:30 P.M.					6 three meals						$6.00

(This itemization made out with funds from New York Times operating fund for [illegible])

(Note to auditor: See attached [illegible] memo for additional explanation)

AMOUNT 106.00
VOUCHER No.
DATE 4-2-01-20
ENTERED
CHECKED
APPLIED TO ADVANCE

Totals	5.00	3.00	72.00	6.00	$106.00

Approved	Total of Expenses	$106.	00
Checked	Amount Advanced		
Audited	John N. Popham Balance Due	$106.	00

(16)

762

[fol. 762]

PLAINTIFF'S EXHIBIT 100

1365

P.430

JOHN POPHAM.
C/O CHATTANOOGA TIMES
CHATTANOOGA, TENN.

The New York Times
EXPENSE STATEMENT

Name John H. Popham
(Full Name)
Department Southern [illegible]
Week Ending 4/[illegible] 1951

EXPENSES SHOULD BE ITEMIZED EACH DAY—READ INSTRUCTIONS ON REVERSE SIDE

Dates	Assignment (Attach List)	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad	Pullman Sleeper	Miscellaneous Item	Miscellaneous Amount
March 28,	departed Chattanooga, Tenn., 5 P.M., arrived Atlanta, Ga.,										20 34
March 28 at 6 P.M.			1.00	7.84	7 room, 3.50 dinner, 1 tips,						19 34
March 29,	departed Atlanta, 11 A.M., arrived [illegible] ington, D.C., 1 P.M., arrived										
Fredericksburg, Va., 3 P.M.			1.00	3.09	15 per diem						19 09
March 30,	Fredericksburg				15 per diem						15 00
March 31,	Fredericksburg				15 per diem						15 00
April 1,	departed Fredericksburg, 10 A.M., arrived Washington, 1 A.M., arrived										
Chattanooga, Tenn., at 11:30 P.M.				34.75	5 two meals, 1 tips						10 75
(all foregoing traveled by air---billed on air travel c-rd)											
April 6,	departed Chattanooga, Tenn., 4 P.M., arrived Audubon, Ala.,										
April 6, at 7 P.M.					7 hotel, 3 dinner, 1 carfare, 1 tips						12 00
April 7,	departed Audubon, Ala., 10 A.M., arrived Tuskegee, Ala.,										
April 7 at 3 P.M.					15 per diem						15 00
April 8,	Tuskegee				15 per diem						15 00
April 9	Tuskegee				15 per diem						15 00
April 10,	departed Tuskegee at 7 A.M., arrived Audubon, Ala., 1 [illegible]										1
April 10					15 per diem, 1 carfare						16 00
April 11,	departed Audubon, Ala., 2 P.M., arrived Chattanooga, Tenn.,										
April 11 at 5 P.M.		3.25			4 two meals, 1 tips						3 25

(Foregoing itemization accounted for with funds from[illegible] [illegible] revolving fund in Chattanooga, Tenn).

(See attached notes for additional information)

AMOUNT	161 43
VOUCHER No.	
CODE	45.21.231
ENTERED	
CHECKED	
APPLIED TO ADVANCE	
Totals	161 43

Approved		Total of Expenses	161 43
Checked		Amount Advanced	
Audited		Balance Due John H. Popham	161 43

763

1366 [fol. 763]

PLAINTIFF'S EXHIBIT 101.

PA1

The New York Times

EXPENSE STATEMENT

Name John N. Popham (Full Name) Work Ending 19

Department Southern News

EXPENSES SHOULD BE ITEMIZED EACH DAY—READ INSTRUCTIONS ON REVERSE SIDE

Date	Assignment	Bus Fare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad	Pullman Sleeper	Item	Amount
Feb. 24,	departed Chattanooga, Ga., arrived Birmingham, Ala., room										$16.0
Feb. 24					$15 per diem, $1 garage						
Feb. 25,	departed Birmingham, Ala., noon, arrived [redacted], Miss.,										$16.0
Feb. 25 at 6 P.M.					$15 per diem, $1 garage						$16.0
Feb. 26,	[redacted], Miss.										
Feb. 27,	departed [redacted], Miss., 2 P.M., arrived Memphis, Tenn.,										$19.5
Feb. 27 at 7 P.M.			$1.00	2.00	$15 per diem, $1.50 garage						$22.5
Feb. 28,	Memphis		$1.00	5.00	$15 per diem, $1.50 garage						$22.5
March 1,	Memphis		$1.00	5.00	$15 per diem, $1.50 garage						
March 2,	departed Memphis, 5 P.M., arrived Huntsville, Ala.,										$22.0
March 2, at midnight			$1.00	2.00	$15 per diem, $1 garage, ($3 press)						
March 3,	departed Huntsville 8 A.M., arrived Chattanooga, Tenn.,										$ 5.0
March 3, at 1 P.M.					$4 (two meals) $1 tips						
					(Note to auditor: foregoing itemization accounted for with funds from New York Times Revolving Fund in Chattanooga, Tenn.)							
					(See attached memo for further explanation.						
					Parking Charges $1.50						
	Totals	4.00	14.00	10.00	4.00	1.50		3.00			$139.50

Approved

Checked

Audited

Total of Expenses $139.50

Amount Advanced XXXXXX

Balance Due John Popham $139.50

764

[fol. 764]

PLAINTIFF'S EXHIBIT 102

1367

F 45

PAID

The New York Times

EXPENSE STATEMENT

Name John N. Popham
(Full Name)

Department Southern News

Week Ending 5 16 1965

EXPENSES SHOULD BE ITEMIZED EACH DAY—READ INSTRUCTIONS ON REVERSE SIDE

Dates	Assignment (Last Item Only)	Bus (Airfare)	Telephone	Automobile Taxi	Hotel	Meals	Tips	Mileage Allowance	Pullman Sleeper	Miscellaneous Items	Amount
Apr 17	departed Chattanooga, Tenn., 8 A.M., arrived Birmingham, Ala.,										
Apr 17	at noon		$1.00			$15 per diem $1 garage					$17.00
Apr 18	departed Birmingham, Ala., at noon, arrived Biloxi, Miss., at										
Apr 18	at 6 P.M.		$1.00			$15 per diem $1 garage					$17.00
Apr 19	Biloxi			$2.00		$15 per diem $1 garage					$18.00
Apr 20	Biloxi		$2.50			$15 per diem $1 garage					$18.50
Apr 21	Biloxi		$1.00	$1.00		$15 per diem $1 garage					$18.00
Apr 22	departed Biloxi, Miss., at 4 P.M., arrived Birmingham, Ala.,										
Apr 22	at 10 P.M.					$15 per diem $1 garage					$16.00
Apr 23	departed Birmingham, Ala., at 4 P.M., arrived Chattanooga, Tenn.,										
Apr 23	at 8 P.M.			$1.00		$7 three meals and tips					$ 8.00
Apr 24	departed Chattanooga, Tenn., at 8 A.M., arrived Birmingham, Ala.										
Apr 24	at noon		$1.00	$2.00		$15 per diem $1 garage					$18.00
Apr 25	departed Birmingham, Ala., at 8 A.M., arrived Montgomery, Ala.,										
Apr 25	at 11 A.M.			$2.00		$15 per diem $1 garage $5 press entert.					$23.00
Apr 26	Montgomery		$1.00	$3.00		$15 per diem $1 garage					$20.00
Apr 27	departed Montgomery at 8 A.M., arrived Talladega, Ala.,										
Apr 27	at noon					$15 per diem					$15.00
Apr 28	departed Talladega, Ala., at 4 P.M., arrived Chattanooga, Tenn.,										
Apr 28	at 8 P.M.					$7 three meals					$ 7.00
Apr 29	departed Chattanooga, Tenn., at 8 A.M., arrived Tallahassee, Fla.,										
Apr 29	at 10 P.M.					$15 per diem $1 garage					$16.00
Apr 30	departed Tallahassee at 9 A.M., arrived Pensacola, Fla.,										
Apr 30	at 6 P.M.			$3.00		$15 per diem					$18.00
May 1	departed Pensacola, Fla., at 10 A.M., arrived Fort Walton Beach, Fla.,										
May 1	at 7 P.M.			$3.00		$15 per diem					$18.00
May 2	departed Fort Walton Beach, Fla., at 10 A.M., arrived Panama City, Fla.,										
May 2	at 6 P.M.			$3.00		$15 per diem					$18.00
May 3	departed Panama City, Fla., at 8 A.M., arrived Tallahassee, Fla.,										
May 3	at 7 P.M.			$3.00		$15 per diem					$18.00
May 4	departed Tallahassee, Fla., at 11 A.M., arrived Jacksonville, Fla.,										
May 4	at 3 P.M.		$2.00	$5.00		$15 per diem, $5 garage					$27.00
May 5	departed Jacksonville, Fla., at 2 P.M., arrived Atlanta, Ga.,										
May 5	at 11 P.M.			$1.00		$15 per diem, $1 garage					$17.00
	Totals					(see second page attached).					

Approved		Total of Expenses	
Checked		Amount Advanced	
Audited		Balance Due	

765

1368
[fol. 765]

PLAINTIFF'S EXHIBIT 103

The New York Times

Expense Statement

Name Wayne Phillips — Feb. 11, 1956

Statements should be turned in weekly.

All expenses must be itemized. Hotel and other receipts should be attached.

Dates	Assignment	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad	Pullman Sleeper	Miscellaneous Item	Amount
2/7	New York			7 —							
	Atlanta			4 —	3 87	1 50	50				
2/8	"			4 —						newspapers	15
	Tuscaloosa	20	30	7 —		8 25	2 —			"	
2/9	"	1 38	20	2 20		1 50	25			"	
	Birmingham	1 38	30	5 —		2 50				"	
	Tuscaloosa			3 —		4 75	30			"	
2/10	"	2 42	20	2 20	3 15	3 —	1 50				
	Montgomery		90	8 —		4 50	70			notebooks	25
										copy paper	20
										newspapers	25
2/11	"	2 42	30	6 —	3 27	3 50	1 70			"	
	Tuscaloosa		30	2 80		5 25	80			"	
	Totals	7 80	2 —	54 20	6 80	34 75	7 75				2 —

Approved — Total of Expenses 176 KL

Checked — Amount Advanced 200. — (2/7, 2/10)

Balance Due N.Y. Times 23 24

Balance Due

766

[fol. 766]

PLAINTIFF'S EXHIBIT 104

1369

The New York Times

Expense Statement

Name Wayne Phillips

Week ending Feb 18, 1956

Statements should be turned in weekly.

All expenses must be itemized. Hotel and other available vouchers should be attached.

Dates	Assignment (List each City)	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad	Pullman Sleeper	Miscellaneous Item	Amount
2/12	Tuscaloosa		1 90	12 50		2 25	40			newspapers	75
2/13	"		90	8 —		9 50	60			"	25
										Dinner-Ed Brown, News Dir, WCAA	7 —
2/14	"		60	15 25		7 50	1 —			Clothes shipped	5 —
2/15	"		20	6 20		7 25	70			newspapers	25
2/16	"		90	5 15		8 50	80			"	25
										typewriter ribbon	75
										notebooks	20
2/17	"		1 —	6 20		9 —	1 20			newspapers	25
2/18	"		60	8 30	97 21	7 80	80			"	25
	Totals		4 60	61 60	97 21	51 30	5 50				15 25

Approved	Total of Expenses		241.41
Checked	Amount Advanced	$300 (2/14, 2/17)	323.14
Audited jmc calc (2)	Balance Due N.Y. Times		$81.73
767	Balance Due		

[fol. 767]

PLAINTIFF'S EXHIBIT 105

1370

The New York Times

Expense Statement

Week Ending Feb. 25, 1956

Name Wayne Phillips

Statements should be turned in weekly.

All expenses must be itemized. Hotel and other available vouchers should be attached.

Dates	Assignment	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad	Pullman Sleeper	Miscellaneous Item	Amount
2/19	Tuscaloosa		20	4 —		8 20	90			newspapers	75
2/20	"		50	7 25		7 20	60			"	25
										lunch - J Hamner	2 25
										ME, Tusc. News	
2/21	"		30	6 75		7 80	80			newspapers	25
										Conference Room	5
										Liquor, etc.	15
										(for round-table	
										interview with	
										8 Tusc. labor leaders)	
2/22	"	1 38	20	2 40	5 45 ✓	1 50	75			newspapers	
	Birmingham	2 53	30	12 —	12	2 50	2 —			"	
	Montgomery		20	4 40		5 15	75			"	
2/23	"		60	6 20		8 15	60			"	
2/24	"		90	7 80		7 60	40			"	
2/25	"		50	8 50		8 40	80			note books	25
										copy paper	1 00
	Totals	3 91 ✓	3 30 ✓	59 30 ✓	66 65 ✓	56 50 ✓	7 10 ✓				25 00 ✓

Total of Expenses 222.11 ✓

Amount Advanced $100 (2/23) 184.73

Balance Due N.Y. Times

Balance Due 40 38 ✓

Approved

Checked

Audited ymcalv

768

[fol. 768]

PLAINTIFF'S EXHIBIT 106

1371

The New York Times

Expense Statement

Name Wayne Phillips

Week Ending March 3, 1956.

Statements should be turned in weekly.

All expenses must be itemized. Hotel and other available receipts should be attached.

Dates	Assignment	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad	Pullman Sleeper	Miscellaneous Item	Amount
2/26	Montgomery		80.	8.50		7.40	.60			newspapers	1.—
2/27	"		1.—	4.20		8.50	.50			"	.25
										dinner Ken Thomas, chief, AP bureau	5.—
2/28	"		.40	6.50	7.44	4.15	2.80	2.98		newspapers	.25
	Birmingham			4.40		5.—	1.50			"	.20
										notebooks	.20
2/29	"		.50	6.80		8.20	.80			newspapers	.30
3/1	"		.60	9.15		7.60	.60			"	.50
3/2	"		.40	6.20		8.40	.60			"	.50
3/3	"		.60	8.20		7.80	1.—			"	.50
	Totals		4.30	69.55	7.44	57.35	8.40	2.98			8.—

Approved

Checked

Audited

Total of Expenses 225.42

Amount Advanced $200. (2/27)

Balance Due N.Y. Times

Balance Due

769

1372 [fol. 769]

PLAINTIFF'S EXHIBIT 107

The New York Times

Expense Statement

Name Wayne Phillips — March 10, 1956

Statement should be turned in weekly.

All expenses must be itemized. Receipts must be attached for all items over $1.00

Dates	Assignment	Bus Carfare	Telephone	Telegrams Cables Night Letters	Hotel	Meals	Tips	Rail Road	Pullman Sleeper	Miscellaneous Items	Amount
3/4	Birmingham		40	7 40		9 50	65			Dinner - Mr+Mrs Leroy Sims - AP bureau chief	12 —
										newspapers	1 —
3/5	"		20	3 —		1 50	20			"	10
	Tuscaloosa		40	6 —		2 25				"	22
	Birmingham			5 —		3 15				"	20
3/6	"		60	18 —		4 20	60			"	22
3/7	"		10	3 —		1 35	1 50			"	10
										note books	20
	Tuscaloosa		30	6 80		6 40	75			newspapers	20
3/8	"		30	7 50	17 51	3 20	1 75			"	20
	Birmingham					5 20	75			"	30
3/9	"		60	6 15		9 40	40			"	20
3/10	"		20	3 20		8 10	50			"	50
		✓	✓	✓	✓	✓	✓				✓
	Total	$ 10	68	65	17 51	61	20	1	10		15 [illegible]
Approved											112.22
Checked										84 CO (3/6, /10)	356.20
Audited											468.42

770

[fol. 770]

PLAINTIFF'S EXHIBIT 108

1373

60-E

The New York Times

Expense Statement

Name Wayne Phillips

Week Ending March 17, 1956

Statements should be turned in weekly.

All expenses must be itemized. Hotel and other available vouchers should be attached.

Dates	Assignment	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad	Pullman Sleeper	Miscellaneous Item	Amount
					✓						
3/11	Birmingham	1.38	.10	3.60	14.82	1.25	1.75			newspapers	.15
	Tuscaloosa		.60	12.20		6.30	.75			"	.25
3/12	"		.70	10.30		8.20	.40			"	.25
3/13	"		.40	8.20		7.80	.35			note books	.30
										newspapers	.25
										copy paper	.50
					✓					stationery	1.50
3/14	"	2.42	.60	6.60	20.20	3.70	1.80			stamps	1.41
	Montgomery		.20	2.70		5.15	1.20			newspapers	.25
3/15	"		.60	8.20		8.60	.80			"	.25
3/16	"		.20	2.60		1.70	.20			"	.25
	Selma					2.20					
	Tuscaloosa		.30			6.15				"	.25
3/17	Montgomery		.10	4.20		4.10	.20			"	.25
	Birmingham		.30			5.40					
			.10								
	Totals	✓ 3.80	✓ 4.10	✓ 58.60	✓ 65.02	✓ 60.55	✓ 7.45			✓	6.00

Approved	Total of Expenses	306.36 ✓
Checked	Amount Advanced	$200. (3/14) 36.98
Audited JMcC	Balance Due N.Y. Times	58.62 ✓
771	Balance Due	

1374
[fol. 771]

PLAINTIFF'S EXHIBIT 109

Times

Expense Statement

Name Wayne Phillips — March 24, 1956

Statements should be rendered weekly.

All expenses must be itemized. Detail receipts must be given for all items.

Dates	Assignment	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Fines	Rail mail	Pullman Sleeper	Miscellaneous Item	
3/18	Montgomery		40	5 40		5 40	60			newspapers	1—
3/19	"		40	6 20		7 50	1 40			"	20
3/20	"		50	5 40		7 70	20			"	25
3/21	"		40	7 80		5 30	30			notebooks	40
3/22	"		40	5 —		5 10	40			newspapers	30
3/23	"		40	7 —	✓	7 50	40			"	25
3/24	"		50	5 10	44 15	5 50	2 70			"	30
	Atlanta					4 20				"	20
	New York			7 —							

The New York Times

Expense Statement

Name GEORGE BARRETT

Book Heading: SUNDAY MAGAZINE ON VON BRAUN
SEPT 16 - OCT 8 - HUNTSVILLE, ALA.

Statements should be turned in weekly.

All expenses must be itemized. Hotel and other available vouchers should be attached.

Dates	Assignment	Bus (Airfare)	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad	Pullman Sleeper	Miscellaneous Item	Miscellaneous Amount
9/16	ARRANGING DATE		1.00								
			3.15								
			3.75								
9/18	TO HUNTSVILLE, ALA.		3.36	7.95	6.76	16.25 (1)	1.25				
9/19	HUNTSVILLE		.75	3.75	6.76	23.50 (1)					
9/20	HUNTSVILLE (AND N YORK)			4.95		12.50 (2)	3.00				
10/8	CHECKING ON STORY SINCE AAAS AFTER SPUTNIK ARRANGEMENT		6.30								

DAILY AVERAGE NOT COMPUTED BECAUSE MEALS AND TIPS INCLUDE ENTERTAINMENT
SEE ATTACHED MEMO

RECEIVED
OCT 15 1957
THE NEW YORK TIMES CO.
PER E. Evangelista

AMOUNT	104.98
VOUCHER No.	
CODE	U.O.C. 201
ENTERED	
CHECKED	
APPLIED TO ADVANCE	

Totals	18.31	16.65	19.52	52.25	4.25	
Approved	Total of Expenses					104.98
Checked	Amount Advanced					200.00
Audited	Balance Due N.Y. Times					95.02
	Balance Due					

723

1376
[fol. 773]

PLAINTIFF'S EXHIBIT 111

...York Times

Expense Statement

Name GEORGE BARRETT

Week Ending ... Departing Bridgeport Conn. Wednesday Oct. 2 Sat. Oct. 5

Statements should be made daily.

All expenses must be itemized. Hotel and other available vouchers should be attached.

Dates	Assignment	Bus Carfare	Telephone	Intermittle Fare	Hotel	Meals	Tips	Railroad	Pullman Sleeper	Miscellaneous Item	Miscellaneous Amount
Oct. 1	NY to Bridgeport		1.75	8 45	7 75	6 25	125			Contributions to Churches, Red Cross Campaign	5 3
Oct. 2	Bridgeport		115	6 75	7 75	8 50	50				
Oct. 3	"		387	7 25	7 25	9 75					
Oct. 4	"		30	50	7 75	5 50	125				
Oct. 5	Bridgeport to NY			1315		5 50	25				7

Daily Average $20.50

RECEIVED
MAR 4 1957
THE NEW YORK TIMES CO.
Accounting Dept.

AMOUNT 148.32
VOUCHER NO.
CODE 2 C. 31 20
CHARGED
CREDITED
POSTED
AUDITED

Totals		
Approved	Total of Expenses	$ 148.32
Checked	Amount Advanced	$ 200 00
Audited MP/A	Balance Due N.Y. Times	$ 51.68
	Balance Due	

774

[fol. 774]

PLAINTIFF'S EXHIBIT 112

1377

The New York Times

Expense Statement

Name GEORGE BARRETT

Book binding - Montgomery Ala. to N.C. to N.C. 24

Statements should be turned in weekly.

All expenses must be itemized. Hotel and other available vouchers should be attached.

Dates	Assignment	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad	Pullman Sleeper	Miscellaneous Item	Miscellaneous Amount
12/21	To Montgomery		2.00	1.54 12.00							
12/21	To Calculate 4 Hours		10.25 1.40 4.00		1.98	4.75	.25				
12/22			1.90	3.25	7.98	13.50					
12/23			2.25	1.65	2.98	11.00					
12/24			3.66	4.65		7.00	2.00				

AMOUNT 120.54
VOUCHER No.
CODE
ENTERED
CHECKED
APPLIED TO ADVANCE

HERE A CAR FROM AVE M IN MONTGOMERY

DAILY AVERAGE

AVERAGE MILEAGE

Totals 9 1133 5 23.94 4.75 1.25 6.41

Approved — Total of Expenses $ 24.51

Checked — Amount Advanced $ 300.00

Audited N/A (12) — Balance Due N.Y. Times $ 175.49

775 — Balance Due

1378 [fol. 775]

PLAINTIFF'S EXHIBIT 113

...York Times

Expense Statement

Name: MARC BARRETT

Week Ending: Montgomery, Ala. Sidey for Magazine

Statements should be turned in weekly.

All expenses must be itemized. Hotel and other available vouchers should be attached.

Dates	Assignment	Rail or Surface	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad	Pullman Sleeper	Miscellaneous Item	Miscellaneous Amount
11/25	N.Y. to Montgomery			2.20	6.18	1.35	.75				
11/26	Montgomery		.45	3.40	6.18	1.10	.75				
11/30	"		1.60	6.75	6.18	1.55	.50				
12/1	"		2.10	5.50	10.30	1.25	.75				
12/2	Montgomery to N.Y.		.40	6.95		1.50	.75			Baggage, Repairs, etc.	1.40
	Hotel not paid for, but shown here in case they are charged to me				123.24						
	Incidental items for interviews with people who would not see clergy, F.B.I., etc. members of committee				4.00						
					CHARGED TO ACCOUNT						
					APPLIED TO ADVANCE						
	Daily Average $15.40 (4 days) Estimated $16.50										
	Totals		4.70	29.08	144.68	5.35					1.40

RECEIVED
DEC 10 1956
THE NEW YORK TIMES CO.

Approved	Total of Expenses	$123.24
Checked	Amount Advanced	150.00
Audited	Balance Due N.Y. Times	26.76
	Balance Due	

776

[fol. 776]

PLAINTIFF'S EXHIBIT 114

1379

Sheet 1

The New York Times

Expense Statement

Name: Kihss, Peter Frederick — News Dept. — Week Ending: March 2, 1956

Statements are to be made weekly.

All expenses must be itemized. Hotel and other available receipts should be attached.

Dates	Assignment (List each City)	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad	Pullman Sleeper	Miscellaneous Item	Miscellaneous Amount
Assignments on Southern Desegregation Survey:											
Jan. 9	NY-Nashville		2 50	4 64	2 85		45				
Jan. 20	Nashville			4 64	3 99						
Jan. 21	Nashville		1 20	4 64	[illegible]					Newspapers	15
					4 82						
Jan. 22	Nashville & Montgomery		[illegible] 60	[illegible]						Newspapers	80
			75	5 67	3 51	1 85					
Jan. 23	Montgomery		30 1 70	5 67	3 20					Newspapers	16
Jan. 24	Montgomery		5 23 65	5 67	1 64					Newspapers	40
			2 04 (pay phone from State Capitol to Tuskegee)								
Jan. 25	Montgomery & Tuskegee		1 62 55	5 67	3 51					Newspapers	15
Jan. 26	Montgomery & Selma		15 65	5 67	1 92					Newspapers	25
			2 70 (pay phone from Selma to Tallahassee)								
Jan. 27	Montgomery & Birmingham	2 53	3 70 60	7 21	1 58	3 90				Newspapers	31
		(bus to Birmingham)									
Jan. 28	Birmingham		2 97	7 21	[illegible]	10				Valet	1 00
Euro-fun-					15 16					Newspapers	30
										Printed calling cards rush	2 75
Jan. 29	Birmingham, Talladega & Anniston	2 70	2 60	1 65							
		1 65									
				7 21	3 63					Newspapers	40
Jan. 30	Birmingham		9 06	7 21	4 13					Newspapers	75
Jan. 31	Birmingham & Tallahassee		4 42	2 25 5 15	6 97	3 25				Newspapers	50
Feb. 1	Tallahassee		1 50	1 95 5 15	3 19					Newspapers	35
Feb. 2	Tallahassee, New Orleans, N to Mobile										
			3 89	1 00 6 36	3 21		60			Newspapers	25
Feb. 3	Mobile	20	1 50	1 90 6 36	3 95		65			Laundry-valet	2 31
										Newspapers	60
Feb. 4	Mobile		1 70	6 36	6 29					Valet	75
										Newspapers	35
	Jan. 19-Feb. 4 totals										
	Totals	7 08	42 13	19 20	73	55	10	80			12 32
				100.49							

Total of Expenses: 265.57 (see next sheet)

Approved

Checked

Audited

Amount Advanced

Amount Due N.Y. Times

Balance Due

(4)

777

1380 [fol. 777]

Plaintiff's Exhibit 115

60-E

The New York Times

PAID

Expense Statement

Name Clarence Dean. | City News Dept | Week Ending 1/10/57

Statements should be turned in weekly.

All expenses must be itemized. Hotel and other available vouchers should be attached.

Dates	Assignment (List each City)	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad	Railroad Sleeper	Miscellaneous Item	Miscellaneous Amount
12/26 (cont)	Birmingham, Ala.	3 10	20	2 40		3 15	2 00				
12/27	" "		40	5 10		5 45	1 00			news items	
12/28	" "	2 75	1 60	4 80	29 40	8 40	2 75			entertainment	4 00
12/29	Tallahassee, Fla.		40	5 60		7 60	1 00			news items	
12/30	"			5 50	24 93					entertainment	2 50
12/31	Montgomery, Ala.	3 40				7 05				"	
12/31	" " "		1 20	5 05		8 10	1 25			"	
1/1	" "		75	3 10		7 35	4 00			"	
1/2	" "		1 60	3 15		8 50	1 50			entertainment	2 25
1/3	" "	1 65	40	4 75	53 52	4 40	2 25				
4 p.m.											

Daily Average Hotel $ 18.24

" " $ 16.29

Telephone

" " 17.29

Montgomery

$ 11.93

Entertainment

AMOUNT 1.59

VOUCHER No.

CHECKED

ENTERED

CHECKED

APPLIED TO ADVANCE #

Totals	10 90	6 75	36 45	107 89	80 00	14 25				2 50

Approved E J Bennett

Checked

Audited MH/A

Total of Expenses 251.59

Amount Advanced 250.00

Balance Due N.Y. Times

Balance Due 1.59

778

13

[fol. 778]

PLAINTIFF'S EXHIBIT 116

1381

...k Times

Expense Statement

...n S Salisbury

April 13, 1960.

Statement ... weekly.

All expenses must be itemized. ... receipted warrants vouchers should be attached.

Dates	Assignment	Bus Carfare	Telephone	Automobile Taxi	Hotel	Meals	Tips	Railroad	Pullman sleeper	Miscellaneous Item	Miscellaneous Amount
4/1	Montgomery Ala		40	6 00	7.75	5 20	2.10			papers	20
4/2	"		2 50		7.75	10.20	1 40			papers	40
	share car hire to Andalusia and back			25.00						pressing	150
4/3	New Orleans		5 07	3.40	8.24	10 40	2.10			papers	60
4/4	Baton Rouge	2 09	5.33	4.10	1030	10 05	1.80			"	40
4/5	"									valet	1.10
4/6	New Orleans		10 46	6.35	10 30	1110	2 40			2	75
			2 10		11 33					papers	40
										laundry	1.65
4/6	Birmingham		4.14	9.60	10 30	10.50	2.50			papers	90
4/7	"		6.17	7.80	10.30	10.00	2.70			valet	1.00
4/8	"		2.60	6.40		10.30	2.60			papers	50
	from Birmingham Newark			3.35							
4/11			11.83								
4/12			10.13								
4/13			8.43								

DAILY AVERAGE - MONTGOMERY 19.75

NEW ORLEANS 20.75

BATON ROUGE 24.75

BIRMINGHAM 23.50

AMOUNT 126.35

VOUCHER No.

CODE 557 - 12

ENTERED

CHECKED

Totals	2 09	49	16.70	00	76.21	77.75	16.10				

Approved

Checked

Audited

Total of Expenses 326 89

Amount Advanced 200

Balance Due N.Y. Times

Balance Due 126 89

779

[fol. 779]

1382

Plaintiff's Exhibit 117